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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Identical letters dated 17 November 1999 from the Secretary-General addressed to the President of the General Assembly and to the Chairman of the Advisory Committee on Administrative and Budgetary Questions

I have the honour to refer to General Assembly resolution 53/212 of 18 December 1998, in paragraph 5 of which the Assembly:

> "*[R]equest[ed]* the Secretary-General, with a view to evaluating the effective operation and functioning of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, with the objective of ensuring the efficient use of the resources of the Tribunals, to conduct a review in full cooperation with the Presidents of the Tribunals, as recommended by the Advisory Committee [on Administrative and Budgetary Questions] in its reports, and in the statement made by the Chairman of the Advisory Committee before the Fifth Committee at its 37th meeting, without prejudice to the provisions of the statutes of the Tribunals and their independent character, and to report thereon to the relevant organs of the United Nations".

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I have the further honour to refer to General Assembly resolution 53/213 of the same date, paragraph 4 of which contained an identical request.

Pursuant to those requests and in accordance with the recommendations of the Advisory Committee on Administrative and Budgetary Questions to which they referred, I constituted a group of five independent experts, acting in their individual capacities, to conduct a review of the effective operation and functioning of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda.

On 11 November 1999, the Chairman and of the Expert Group delivered to me the Group's report. I enclose the text of that report.

(*Signed*) Kofi A. **Annan**

Letter of transmittal

Letter dated 11 November 1999 from the Chairman of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda addressed to the Secretary-General

The Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) has the honour to present herewith its report in response to your request made pursuant to General Assembly resolutions 53/212 and 53/213 of 18 December 1998.

The ICTY part of the report, in provisional draft form, was provided to each organ of the Tribunal, to the Department of Management and to the Office of Legal Affairs. Still in provisional draft form, the entire report was provided to each organ of ICTR, the Appeals Chamber and to the Office of Legal Affairs.

Comments and suggestions with respect to the drafts were received by the Expert Group from many of the recipients and were carefully considered. To the extent deemed appropriate by the Expert Group, the comments and suggestions were reflected, or otherwise taken into account, in the final report. This, however, is not meant to indicate that the Expert Group sought endorsement of all or any particular part of the report or the recommendations made therein by any of those who reviewed or commented regarding it.

The Expert Group wishes to express its appreciation to you for the confidence and the important responsibility you entrusted to it, as well as for the opportunity to be of service to the United Nations.

We remain at your disposal in the event that you should have any questions or desire any further information with respect to our report.

(*Signed*) Jerome **Ackerman**
Chairman

Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

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I. Introduction

1. Presented below is the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).[1] Section II describes to the establishment and mandate of the Expert Group and to the manner in which it organized its work. Thereafter, the report discusses each of the three organs of the Tribunals — the Chambers, the Office of the Prosecutor and the Registry — their organization and work, the impediments to their effective functioning and remedial measures being taken. The discussion includes specific issues referred to in the General Assembly resolutions leading to the establishment of the Expert Group and the Expert Group's recommendations. Issues, narratives and recommendations specific to ICTY and ICTR are so identified; otherwise the report is applicable to both Tribunals.

II. Establishment and mandate of the Expert Group

2. Acting on recommendations in the reports of the Fifth Committee (A/53/755 and 756) with respect to financing of the International Tribunals for the former Yugoslavia and for Rwanda and similar recommendations in reports of the Advisory Committee on Administrative and Budgetary Questions (A/53/651, paras. 65-67, and A/53/659, paras. 84-86), the General Assembly in its resolutions 53/212 and 53/213 of 18 December 1998

> "[*Requested*] the Secretary-General, with a view to evaluating the effective operation and functioning of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, with the objective of ensuring the efficient use of the resources of the Tribunals, to conduct a review in full cooperation with the Presidents of the Tribunals, as recommended by the Advisory Committee in its reports,[2] and in the statement made by the Chairman of the Advisory Committee before the Fifth Committee at its 37th meeting,[3] without prejudice to the provisions of the statutes of the Tribunals and their independent character, and to report thereon to the relevant organs of the United Nations".[4]

3. Thereafter, an Expert Group to review the effective operation and functioning of ICTY and ICTR was appointed by the Secretary-General and was to be based in and work from The Hague. The members of the Expert Group are as follows:

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[1] The Expert Group acknowledges the important contribution to this report of its Executive Secretary and the dedicated work of the Group's other assistants. The Expert Group also wishes to acknowledge the helpful pro bono assistance generously provided by the law firm of Covington & Burling in Washington, D.C.

[2] A/53/651, paras. 65-67, and A/53/659, paras. 84-86.

[3] A/C.5/53/SR.37, para. 43.

[4] Resolution 53/212, para. 5; resolution 53/213, para. 4.

Jerome Ackerman, former President of the United Nations Administrative Tribunal (United States of America);

Justice Pedro R. David, Judge of the Cámara Nacional de Casación Penal of Argentina;

Justice Hassan B. Jallow, Justice of the Supreme Court of The Gambia, Former Attorney General and Minister of Justice (The Gambia);

Justice K. Jayachandra Reddy, former Public Prosecutor; former Judge of The Supreme Court of India (India);

Patricio Ruedas, former Under-Secretary-General for Administration and Management of the United Nations (Spain).

4. The mandate conferred upon the Expert Group by the Secretary-General is as follows:

"*Mandate*

"The Expert Group shall prepare an evaluation of the functioning and operation of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda with the objective of enhancing the efficient use of the resources allocated to the Tribunals.

"In conducting its review, the Expert Group shall be guided by the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions which are contained in paragraphs 65 to 67 of its report on the revised budget estimates for 1998 and proposed requirements for 1999 of the International Tribunal for the Former Yugoslavia (A/53/651) and in paragraphs 84 to 86 of its report on the revised budget estimates for 1998 and proposed requirements for 1999 of the International Criminal Tribunal for Rwanda (A/53/659) and by the statement of the Chairman of the Advisory Committee made before the Fifth Committee of the General Assembly at its 37th meeting (A/C.5/53/SR.37, para. 43). Copies of the relevant portions of these documents are attached to, and form part of, these terms of reference.

"The review of the Expert Group shall be conducted in full cooperation with the Presidents of both Tribunals and without prejudice to the statutes of the Tribunals and their independent character as judicial bodies."

5. The mandate included a provision for the Expert Group to be assisted by a Secretary and such other staff as might be necessary, and also included a requirement that the Group should report to the Secretary-General by 31 August 1999. The Group's costs were to be borne in equal shares by ICTY and ICTR.

6. Paragraphs 65 to 67 and 84 to 86 of the reports of the Advisory Committee referred to in the Group's mandate, which are essentially identical, state:

"65. In the view of the Advisory Committee, the time has come to have an expert review of the management and organizational structure of each organ of the International Tribunal for the Former Yugoslavia, in particular the Office of the Prosecutor and the Registry. Accordingly, the Committee recommends that the Secretary-General convene a group of independent experts, acting in their individual capacity, to evaluate the operations and functioning of the Tribunal. The group should comprise judges, prosecution, trial and defence experts with sufficient experience in their professions to be able to evaluate a Tribunal of international character. The group should also comprise individuals from the academic community.

"66. The evaluation of the Tribunal should encompass all aspects of the functioning of the Tribunal, including the optimum use of investigation personnel, trial and

defence attorneys, co-counsel, witnesses and expert witnesses. The organizational structure of the three principal organs of the Tribunal should be assessed and, drawing from the practice of Member States, particular attention should be given to the services provided to indigent defendants and suspects and the long-term question of enforcement of sentences. The experience so far of having a single Prosecutor for both the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda should also be assessed.

"67. The cost of the evaluation of the Tribunal should be borne by its budget and reported in its performance report. The evaluation report should be submitted to the General Assembly at its fifty-fourth session through the Advisory Committee. A similar recommendation is being made in respect of the International Criminal Tribunal for Rwanda in the related report of the Advisory Committee."

7. The following is the summary of the statement of the Chairman of the Advisory Committee referred to in the Group's mandate:

"43. Mr. Mselle (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee believed that the review, with full participation of the Tribunals, should focus on judicial management rather than administrative management and that the group conducting it should comprise judges, prosecution, trial and defence experts with sufficient experience to be able to evaluate a Tribunal of international character. The purpose of the proposed expert review was not in any way aimed at the statutes of the two Tribunals. He stressed that the principal objective of the review would be judicial management, even though judicial management had an important impact on administrative management and efficiency of the Tribunals. He gave as an example the introduction of pre-trial court management as referred to in paragraphs 15 and 21 of the reports of the Secretary-General (A/C.5/53/13 and A/C.5/53/15) on the International Tribunals for the Former Yugoslavia and Rwanda, respectively. He indicated that when at The Hague, the Advisory Committee had been informed that a seminar had been convened before the new procedure was introduced. The seminar had included outside experts in judicial court management. The Advisory Committee therefore welcomed the introduction of pre-trial court management and concluded that that experience could be used to introduce improvement in other areas of the judicial functioning of the two Tribunals. In view of the foregoing, the Advisory Committee believed that the proposed review could not be undertaken by the Office of Internal Oversight Services, the Board of Auditors, the Joint Inspection Unit or the United Nations Secretariat."

8. Having in mind the above guidance in the Expert Group's mandate as well as that contained in the General Assembly resolutions, the Group determined that its evaluation of ICTY and ICTR should avoid, to the extent feasible, duplicating the work of United Nations internal audit and inspection activities, and that of the Office of Internal Oversight Services, regarding personnel and financial matters such as the management of budgetary or extrabudgetary accounts. The Expert Group concluded instead that its evaluation should examine the operation and functioning of the three principal organs of each Tribunal — the Chambers, the Office of the Prosecutor and the Registry — with a particular focus on judicial management, but at the same time assessing the organizational structure of each as well as the optimum use of investigation personnel, trial and defence attorneys, co-counsels, witnesses and expert witnesses. In addition, the Expert Group included in the scope of its work attention to the services provided to indigent accused and suspects and the long-term question of enforcement of sentences. The operation of two Tribunals with a single Prosecutor was also to be evaluated.

9. Owing to delays in administrative measures and resulting delays in other logistical arrangements necessary for the commencement of the work of the Expert Group, the Group held its first meeting, devoted to organizational matters and briefings, in New York from 26 to 30 April 1999. At that time, the Group met with the United Nations Under-Secretary-General, the Legal Counsel; the Assistant Secretary-General and Deputy to the Legal Counsel, the Under-Secretary-General for Management, the Assistant Secretary-General and Controller, representatives of the Office of Internal Oversight Services, including its Investigation Section, and the Chairman of the Advisory Committee on Administrative and Budgetary Questions. In those briefings, it was generally recognized that the Group would not be able to submit its report by 31 August 1999. In order to conduct the review, requests were directed to ICTY and ICTR for documents and data. Although most of the material sought from ICTY was received quite promptly and the remainder soon thereafter, no material from ICTR was received at The Hague until 13 July 1999.

III. Organization of work

10. In addition, the Group's Executive Secretary arranged for communications to States and interested non-governmental organizations inviting them to contact the Expert Group with regard to any matters of interest or concern they might have as to subjects within the mandate of the Expert Group, and the Group's Executive Officer initiated action to establish offices for the Group at The Hague.

11. During the interval between the New York meeting and 31 May when the Group convened in offices at The Hague, it received materials from ICTY in response to its requests. In view of the volume of ICTY materials and the date of receipt, the Expert Group was able to review and analyse only a portion of it before 31 May. But to varying degrees, other background materials were available for study before the beginning of work at The Hague.

12. After the Expert Group's arrival at The Hague, it scheduled, as promptly as possible, meetings with: (a) the President of the ICTY Tribunal and each of the 11 judges who were available; (b) the Prosecutor, the Deputy Prosecutor and 14 members of the Investigative and Prosecutorial staff; and (c) the Registrar, the Deputy Registrar and 11 members of the Registry staff including the Commander of the Detention Unit. With respect to ICTR, the Expert Group met with all 10 Judges.[5] The Expert Group also met in Arusha and Kigali with the Deputy Prosecutor, 13 members of the investigative and prosecutorial staff, the Registrar and 13 members of the Registry staff, as well as with 3 defence counsel. In October, 1999, the Expert Group met at The Hague with the ICTR Chief of Investigations, and with the new Prosecutor, Ms. Carla Del Ponte. Annex I to the present report sets forth the names of the Judges and the name and function of each ICTY and ICTR staff member with whom the Group met, as well as government representatives who were interviewed. With regard to all of its meetings, the Expert Group cannot praise highly enough the wholehearted and excellent cooperation it received from each organ of both Tribunals. The Group was especially impressed with the openness and candor of each of the individuals with whom it spoke, as well as with their sincere interest in assisting the Group in carrying out its mandate. Indeed, the Expert Group wishes to acknowledge the assistance and cooperation accorded to it not only by each organ of both Tribunals, but also by the United Nations Office of Legal Affairs, by other United Nations offices as well as others with whom the Group has been in contact.

[5] Nine Judges and Judge Aspegren, whose appointment had been temporarily extended.

13. The Expert Group also met with a representative of ICTY defence counsel, an Advisory Panel to the ICTY Registry with respect to assigned counsel, the Ambassador of Switzerland to the Netherlands and an associate, the Ambassador of Finland to the Netherlands, representing the European Union, and an associate, together with a representative of the European Commission. The Group also received a written communication from the Government of Belgium. Each provided useful information and identified areas for inquiry or consideration by the Group with respect to one or both Tribunals.

IV. The Tribunals

14. In May 1993 and November 1994, respectively, the International Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) were created by statutes adopted by the Security Council, acting under Chapter VII of the Charter of the United Nations. ICTY's competence encompasses "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, in accordance with the provisions of [its] Statute".[6] ICTR's competence encompasses "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of [its] Statute".[7] Since their creation, the two Tribunals have functioned under their respective statutes and have experienced substantial growth in personnel and in budgetary requirements.[8]

15. When the Security Council created ICTY and ICTR, it embarked upon uncharted waters. Apart from the Nuremberg and Tokyo Tribunals following the Second World War, which functioned in a totally different environment and under dramatically different circumstances, no international criminal tribunal established in connection with conflicts such as those in the former Yugoslavia since 1991, or in Rwanda during 1994, had ever existed. To be sure, much thought had been devoted after the Second World War to the subject of an international criminal court by organs of the United Nations and others, which contributed to shaping the contours of the ICTY and ICTR Statutes. But, as will be seen, without (and perhaps even with) the benefit of actual practical experience, creation by the United Nations under its Charter of prosecutorial and judicial organs almost inevitably presented issues either unforeseen or not fully appreciated, issues that would unfold only through the often costly process of trial and error.

16. In establishing and supporting ICTY and ICTR, the United Nations has taken measures both noble and far-sighted. Although events in Kosovo and elsewhere have shown the continuing gulf between such aspirations and realities, history will record that the international community, through these ad hoc Tribunals, has sought to defend humanitarian values and has striven to restore and maintain peace in parts of the world that have been beset with unspeakable violence. It is the hope of the Expert Group that, by examining the

[6] Article 1 of the ICTY Statute (S/25704, annex, as revised by Security Council resolution 1166 (1998) of 13 May 1998.

[7] Article 1 of the ICTR Statute (Security Council resolution 955 (1994) of 8 November 1994), as revised by Security Council resolution 1166 (1998) of 13 May 1998.

[8] In 1999, ICTY's annual budget reached $94,103,800; its total number of personnel was 838 (assessed budget) and 10 (extrabudgetary). ICTR's 1999 budget was $68,531,900 and its personnel numbered 779 (assessed budget) and 41 (extrabudgetary).

operations and functioning of the two ad hoc Tribunals, this report will further the laudable objectives reflected in their statutes.

A. Development and current structure

17. When the Tribunals were created, their statutes provided for two Trial Chambers consisting of three judges in each. In addition, provision was made in the ICTY Statute for an Appeals Chamber of five judges. Following the creation of the Rwanda Tribunal in 1994, the jurisdiction of the Appeals Chamber was enlarged to include appeals from ICTR as well as ICTY.[9] In 1998, the Security Council created an additional Trial Chamber for each Tribunal. ICTY's became functional in November of that year, and ICTR's in June 1999.

18. Judges are elected for four-year terms and are eligible for re-election. Their terms may be (and in some cases have been) extended in order to enable them to complete unfinished cases. In ICTY, 14 Trial Chamber and Appeals Chamber judges are supported by a staff consisting of 20 Professional posts and 18 General Service positions. The ICTY President, however, has had only limited staff support (2 P-2 Legal Assistants and a Secretary up to 1999, and since then a Special Assistant also) in view of the President's many responsibilities (see paragraph 19). In ICTR, the 9 judges have a support staff consisting of 17 Professional and 11 General Service posts.

19. The Presidents of ICTY and ICTR are elected by the judges. ICTY's President serves as a member of the Appeals Chamber and also presides over its proceedings, which include both ICTY and ICTR appeals. The duties of the Presidents fall into three general categories: judicial, administrative and diplomatic. In addition, the presidents serve as members of the Bureau, which is composed of the President, the Vice-President and the presiding judges of the Trial Chambers. Under rule 23 of the Rules of Procedure and Evidence of both Tribunals, the Presidents consult the Bureaux on all major questions relating to the functioning of the Tribunal. The Presidents report to the Security Council non-compliance by States with the obligations imposed by the Statutes, and are also responsible for presenting the annual reports of the Tribunals to the General Assembly. On the diplomatic front, the Presidents meet and have discussions with many visitors, including heads of State, ministers, ambassadors and other officials. The meetings relate to various diplomatic issues, including support from States on agreements for enforcement of sentences and witness relocation, and to other assistance and cooperation matters that greatly affect the Tribunal's work. The Presidents also act as principal fund-raisers for the Tribunals, seeking contributions from States and non-governmental organizations to the Tribunals' trust funds in support of extrabudgetary projects. Both Presidents preside over plenary meetings of their Tribunals, assign the judges to the various Chambers and are responsible for the coordination of their work as well as supervision of certain activities of the Registry, including those pertaining to the conditions of detention of detainees. The Presidents also perform other functions under the respective Statutes and Rules of Procedure and Evidence. The latter include a variety of administrative and other functions, including the designation of judges to serve on internal committees dealing with such matters as Rules, Trial Management, Judicial Practice, Personnel, Publications, Legal Assistants, Library, Relations with the other Tribunal, and External Relations. In addition, the Presidents oversee or review the issuance of "Practice Directives" providing guidance with respect to the trial and other functions of

[9] In reality, there are two Appeals Chambers — one for ICTY and one for ICTR. However, the judges of one are treated as the judges of the other. For ease of reference, the report refers to the Chambers as though they were a single Chamber.

the Chambers. In ICTY, for example, a directive describes the procedure for proposals (from within or outside ICTY) for consideration and publication of amendments to the Rules of Procedure and Evidence; another describes the procedures for pardons and related measures regarding convicted persons. In ICTR, there are, for example, directives on assignment of defence counsel and on Court Management.

20. By September 1993, all of the ICTY judges had been elected by the General Assembly. They commenced work at The Hague in November of that year, and by February 1994 had promulgated their initial Rules of Procedure and Evidence. Until May 1998, only one courtroom was available. A second became available in that month and a third in June 1998.[10] ICTY did not have a Prosecutor until 15 August 1994 when Judge Richard Goldstone took up his duties. The Office of the Prosecutor was able to fill its staffing needs at the time by the end of January 1995. Investigations, aided by the earlier work of the Commission of Experts appointed by the Secretary-General pursuant to Security Council resolution 780 (1992) of 6 October 1992, enabled the submission of the first indictments for confirmation to the Tribunal in late 1994.

21. The parallel, although later, history of ICTR includes the election of six judges in May 1995 and the promulgation of the first Rules of Procedure and Evidence in June 1995. Delays ensued from the need to decide (in February 1995) on the geographical seat of the Tribunal and, thereafter, to negotiate and sign a lease (on 31 October 1995) for suitable premises for the Tribunal. ICTR has also experienced, and continues to experience, extreme difficulties because of deficient or unreliable infrastructure, especially as regards communications and other office equipment; difficulties compounded by the divided and dispersed location of activities of the Tribunal among Arusha, Kigali and The Hague. The first courtroom was completed only in July 1996; a second and third courtroom became operational respectively in August 1997 and February 1999. Meanwhile, however, indictments covering three individuals were submitted and confirmed in November 1995, and a further 13 in 1996. The first trial to be conducted by ICTR commenced on 9 January 1997.

B. Unique character of the Tribunals

22. ICTY and ICTR, even without regard to the nature of their jurisdictions, are unlike other functioning criminal tribunals. ICTY now combines in the same building two organs, the Office of the Prosecutor and the Chambers, which in national structures would ordinarily be quite separate and situated in different locales; in ICTR, the Trial Unit of the Office of the Prosecutor will also be contiguous to Chambers as of 1 January 2000. Moreover, in both Tribunals, the administrative needs of the two organs are served by another free-standing organ, the Registry, located in the same building. In national criminal justice structures, the judiciary and the Office of the Prosecutor would each have its own administrative organization tailored to its own needs. Because of the unusual dual role of the Registry, it is occasionally faced with seeming conflicts in discharging its responsibilities with regard to the Chambers, on the one hand, and the Office of the Prosecutor, on the other. And this results in frictions, about which more will be said below. In addition, the role of the Registry,

[10] ICTY and ICTR courtrooms are unusual in a few respects. They provide a high degree of security for judges and parties involved in proceedings before the Tribunal by means of a thick, bullet-proof glass wall shielding the area in which the proceedings are conducted from the public seating area, and by the presence of security officers in both areas. In addition, each courtroom is equipped with extensive electronic facilities permitting simultaneous interpretation, transcription of the proceedings, imaging and televising. The public area has television monitors and individual audio equipment with language options.

in a sense, places it in the unusual position of at times being a policing organ of the statutorily independent Chambers and Office of the Prosecutor since the budget proposals of each are scrutinized by the Registry before submission to the United Nations. The Tribunals are unique in yet another respect. Both the Chambers, as judicial organs, and the Office of the Prosecutor, pursuant to articles 16 (2) and 15 (2) of the ICTY and the ICTR Statutes, respectively, are independent of the Secretary-General. But normal United Nations regulations and rules, administered under the authority of the Secretary-General as chief administrative officer of the Organization, apply to both Tribunals and the Registries regard it as their responsibility to see to it that these are observed. This also causes complexities.

23. Taking into account the various views submitted by interested States and others and the unique composition of the Tribunals, including the unusual hybrid legal characteristics of their rules drawn from both common law and civil law systems, it is surprising that it actually took ICTY only three months, and ICTR less, to develop the initial version of their Rules of Procedure and Evidence. That the Tribunals themselves, rather than a legislative body promulgated the Rules of Procedure and Evidence is perhaps the most striking difference between their functions and those of national courts. It also bears emphasis that their Rules of Procedure and Evidence embrace a broader range of complex matters than is apt to be found in comparable rules of national legal systems. For example, there would ordinarily be no need for a national judicial system to promulgate rules dealing with its primacy as against other national systems. Yet article 9 (2) of the ICTY Statute and article 8 (2) of the ICTR Statute, in providing for that, confer powers on each unlike those of national courts, and rules were needed to spell out the manner in which those articles would be applied. Similarly, in many jurisdictions there would normally be no occasion for a national court to promulgate rules, such as ICTY and ICTR rules 37 (dealing with the functions of a Prosecutor), the conduct of investigations or the treatment of suspects, or a rule, similar to rule 37, governing regulations to be issued by a Prosecutor. Such matters would, subject to compliance with or unless governed by law, frequently be within the province of the Prosecutor. Unlike the prevailing situation in national jurisdictions, the Prosecutor, while independent in many respects, is an organ of the Tribunals, and to a degree is integrated into their rules as well as those of the United Nations.

24. Still other examples of features in the Rules of Procedure and Evidence which are not generally found in the rules of national courts are those dealing with the responsibilities of the Registry regarding the assignment of counsel, detention of suspects and indictees, and the protection of witnesses. In short, development of the Rules of Procedure and Evidence was, at the outset, a far more complex undertaking than would be the case in a national system, and continues to be an evolutionary process with the periodic adoption so far of 14 sets of amendments in the case of ICTY and 7 sets of amendments for ICTR, all inspired by experience.

25. The Tribunals are unique in another important respect: their dependency upon Member States. The Tribunals have no coercive powers in relation to their arrest warrants or orders affecting the property of accused persons, and therefore are unable to obtain custody of suspects or indictees or freeze their assets without the cooperation and assistance of national Governments or international forces. Similarly, they have no access to witnesses or victims without the cooperation or assistance of Governments or international forces. Nor do they have the power to obtain evidence without recourse to the same sources of cooperation and assistance. Under the Statutes of the Tribunals, national Governments are required to cooperate and assist, but there is no enforcement mechanism. In cases of non-cooperation, ICTY and ICTR can only report to the Security Council. The specifics as to the pervasive effect of dependence on State cooperation will be dealt with further in the present report.

C. Indictments and decisions

26. The Trial Chambers of ICTY preside over proceedings involving allegations of: grave breaches of the Geneva Conventions of 12 August 1949; violations of the laws or customs of war; genocide; and crimes against humanity — all either treaty-based, or as reflected by norms of customary international law. The Trial Chambers of ICTR preside over allegations of genocide, crimes against humanity and violations of article 3 common to the Geneva Conventions and of Additional Protocol II. These, however, are greatly condensed descriptions of what is actually a lengthy, complex process beginning with a.tion by the Chambers in aid of investigations by the Office of the Prosecutor and leading to examination and confirmation of indictments, orders relating to detention, supervision of pre-trial proceedings, including motions and other ancillary matters, trial proceedings, which also include motions and ancillary matters, preparation of judgements and orders regarding all of the foregoing matters and dealing with post-trial motions and with sentencing.

27. All proceedings before the Tribunals are conducted in both English and French. Thus, apart from other instances in which different language requirements must be satisfied, in particular Bosnian-Croatian-Serbian in ICTY, and Kinyarwanda in ICTR, all documents must be issued in both English and French. The related needs for translation of documents have been a source of difficulty and delay affecting not only the Chambers, but other organs of the Tribunal as well. Of the two official languages, English appears to be the predominant language of much of the legal and other staff of the Tribunals, while several of the judges are more comfortable working in French than in English. The latter, it may be noted, have been accommodating and flexible in refraining from demanding the instant availability of French translations.

28. As of 31 August 1999, the work of ICTY may be summarized as follows: Twenty-five public indictments of 66 alleged war criminals were outstanding. Since the establishment of the Tribunal, 91 have been publicly indicted. Arrests have been made in respect of 17 of the 25 public indictments. Sealed indictments exist but their number as well as the number of accused persons named in them has not been made publicly available. Of those indicted, some of whom have been released, 31 were in custody as of 31 August. Six of these detained individuals had been arrested by States, one was arrested by the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), 12 were detained by the Stabilization Force (SFOR) and 13 surrendered voluntarily.

29. In relation to the accused who were in custody, seven have been convicted and one acquitted. All of the convictions were appealed. One of the appeals has been decided with the conviction having been affirmed and appeals by the prosecution with respect to various issues having been sustained. The result is that the accused stands convicted of further offences and is awaiting resentencing. One accused was acquitted but his acquittal is being appealed by the Prosecutor and he has been released pending the outcome of the Prosecutor's appeal. Three of the accused died subsequent to indictment before proceedings against them had been completed. One other was released upon withdrawal of his indictment. Of those remaining, the cases of 10 accused are currently in trial proceedings or awaiting judgement. The rest are in detention awaiting trial. It is estimated that the trials of a majority of 14 of the detainees are likely to commence in early 2000, and the remainder later in the year. It is possible that additional accused in the cases likely to be tried in 2000, who have been arrested during the remaining months of 1999, might also be tried in 2000. With respect to the balance of publicly indicted persons, 33 remain at large, one being in custody in Croatia. Six of them have died and the indictments of 18 have been withdrawn by the Prosecutor.

30. It is not possible to predict when the currently unapprehended indictees will be taken into custody. This is simply not within the control of the Prosecutor. Nor can a firm prediction be made as to the number of new indictees; this will depend upon the outcome of investigations. Hence, even taking into account the current prosecution policy of indicting only notorious perpetrators and high-level suspects, it is not possible to make a judgement as to how long it will take for the ICTY Chambers to complete their work, and this is especially true in view of the unknown factors associated with the conflict in Kosovo. Based on what is now known, however, it has been estimated by the Office of the Prosecutor that it will take about four years to finish investigations now planned and that it is likely that it will be at least 10 years before all of the present and currently foreseeable trial and appeal proceedings before ICTY are completed.

31. As of 30 September 1999, the work of ICTR may be summarized as follows: The Tribunal had completed two full trials, and upon verdicts of guilt, issued sentences therein (*Akayesu* and *Kayishema/Ruzindana*). Two sentences have been delivered on guilty pleas (*Kambanda* and *Serushago*). Two further trials have been completed; judgement is expected shortly (*Rutaganda, Musema*). Two new trials (*Bagilishema* and *Semanza*) were expected to commence in the near future. In the meanwhile, ICTR has also had to deal with over 200 motions and has delivered decisions in about 150 of them. (A number of others were withdrawn.)

32. The Prosecutor has issued indictments in respect of 48 individuals (of which 1 was eventually withdrawn). As of 20 September 1999, there were 34 detainees in United Nations detention facilities; 4 others were detained in other countries (1 in the United States and 3 in Cameroon). The 34 detainees in United Nations detention facilities comprised the 7 referred to in paragraph 31 above in respect of whom judgements had either been delivered or were expected shortly, and the 27 accused awaiting trial. Three of the 27 have been awaiting trial since late 1996, and 13 since different dates in 1997. Twelve suspects remained at large.

33. Those convicted or detained are for the most part political figures or senior administrators at a level which amply fulfils the Prosecutor's declared policy of concentrating on those in authority at the time of the genocide in Rwanda. Thus, current detainees include a former Prime Minister, 10 former Cabinet Ministers, 6 senior political appointees, 4 senior military officers, 3 former *Préfets* (or provincial governors) and five mayors (*Bourgmestres*) of provincial capitals.

34. Predicting future developments is uncertain, at best. Approximately 90 investigations are still in progress, and the Experts Group was informed that perhaps 20 suspects could be jointly indicted in the course of 2000. Bearing in mind the current and foreseeably more rapid pace of judicial proceedings, a period of some seven or eight years appears to be a minimum for discharge of the Tribunal's mandate.

D. Functions of the Trial Chambers[11]

35. Major concerns have been voiced not only by United Nations officials, Member States and others, but also by all the organs of the Tribunals with regard to the slowness of the pace of proceedings, the associated length of detention of accused, the length and cost of Tribunal operations and the length of time that will be required before they discharge their mandates. But more pointedly, the question is why, after almost seven years and expenditures totalling

[11] Annex II contains organigrammes describing the structure of the ICTY and ICTR Chambers.

$400 million,[12] only 15 ICTY and ICTR trials have been completed. And why have so many accused been in custody awaiting trial for varying lengthy periods? Prolonged pre-trial detentions are, of course, a direct result of the length of pre-trial proceedings and interlocutory appeals, as well as of ongoing trials in other cases, which have absorbed available judicial resources. In some instances, particularly as regards ICTY, they are also caused by non-cooperation of governments in delivering into Tribunal custody indictees whose presence is essential for efficiently trying one or more indictees who are already in custody. In ICTR, the reasons for delay are multiple. They can be summarized as, first, the fact that detainees, particularly in the early stages of the work of the Tribunal, were provisionally arrested under rule 40, without the investigation having been completed; secondly, shifts in the strategy of the prosecution (for instance, to emphasize the factors of sexual assault, and of conspiracy); thirdly, delays resulting from motions to amend or join indictments; fourthly, delays resulting from interlocutory appeals; and fifthly, delays resulting from adjournments in the proceedings. An examination of the reasons for the lengthy proceedings, as contained in the following paragraphs, largely explains the length of detentions.

E. The Chambers: Obstacles to effective functioning

1. Pre-trial delay

36. The Expert Group was informed by the Court Management and Support Section of the ICTY Registry that it normally allows itself at least five and one half months after the initial appearance to accommodate the matters referred to in paragraphs 37 to 50 below, including language translation requirements with respect to all documents filed with the Tribunal, before it can attempt to schedule a trial. If, as frequently occurs, the indictment is amended, the elements delaying the start of a trial are repeated. There is, accordingly, small likelihood that a trial involving complex issues or multiple accused can begin in less than a year at the earliest after initial appearance of the accused.

(a) Rules requirements and language translation problems

37. Ideally, the trial of an accused should commence and be concluded expeditiously following an indictment. But that has not generally been the case in ICTY or ICTR. Assuming that one or more related indictees are in custody at or soon after confirmation of the indictment and plead not guilty in their initial appearance, a trial date will be set taking into account a number of factors, one of which is the time within which the Prosecutor is obliged to furnish to the accused copies of supporting material which accompanied the indictment, prior statements obtained by the Prosecutor from the accused and copies of the statements of all witnesses the Prosecutor intends to call as well as any exculpatory evidence. Unless all of this material is in the language of the accused, usually Bosnian-Croatian-Serbian or Kinyarwanda, as well as in English and French, it must be translated. This gives rise to substantial delays. Indeed, as a general proposition, the impact of which extends to all facets of the work of the Tribunals' three organs, translation is a bottleneck causing delay on a wide scale, including delay in the issuance of Tribunal decisions after they have been agreed upon by a Trial or Appeals Chamber. Availability of qualified translators is limited as are the budgetary resources available for the function. This grave problem is discussed further in paragraphs 118 to 119, 140, 168 and 236. In addition, the

[12] Since ICTY and ICTR have not been able to fill all their budgeted posts, or carry out all planned activities, their entire budget has not been utilized in each year.

Prosecutor must locate and make available to the defence for inspection, upon request, any evidence in the Prosecutor's control material to the defence or intended for use by the Prosecutor or obtained from the accused or which belonged to the accused.[13] When such a request is made, there is a corresponding obligation on the part of the defence, and the time for all of this to be completed must also be taken into account. Needless to say, it is not surprising that extensions of time may be required by either or both parties with respect to these matters. Of relevance to this factor are the Rules on amendment of indictment (rule 50 in both Tribunals), which allow the accused, once he has entered a plea on the new charges, a period of 30 days (ICTY) or 60 days (ICTR) in which to file preliminary motions in respect of the new charges. In the opinion of the Expert Group, those periods should be considered as a maximum, which could be shortened at the discretion of the Trial Chamber if it believes the circumstances so permit or require.

(b) Courtroom availability

38. Not only is the schedule of courtroom activity a significant factor in setting trial dates, the size of an available courtroom also enters the picture. In ICTY, only two of the three courtrooms are large enough to accommodate easily more than two accused and their counsel. ICTR courtrooms can accommodate as many as six accused. Thus, courtroom size can be a governing factor in setting a trial date. Even the two large ICTY courtrooms are limited in terms of the number of accused and counsel that can be accommodated. In the *Tadić* case, ICTY had only a single courtroom for the entire trial, which spanned 86 days over approximately seven months, including adjournments for other cases and when required by the parties. The availability of only one courtroom meant that, for the most part, the trial could be conducted for no more than four days a week in order to make the courtroom available for other proceedings. Even with more than one courtroom in 1998 and 1999, the ICTY and ICTR records show that frequently trials in progress are limited to less than full-day sessions in order to make courtrooms available for pre-trial, appeal or ancillary matters in other cases in which hearings are required.

39. ICTY and ICTR courtroom utilization records for 1998-1999 also indicate unused courtrooms on numerous days for all or part of a day. This may perhaps create the impression that such unutilized capacity could accommodate additional trials. But this is unfortunately not the case. It would simply not be feasible to attempt to schedule trials against the possibility that unforeseen courtroom availability might occur because of unexpected events in ongoing cases. This is especially so where, as is the case of both Tribunals, witnesses and defence attorneys do not ordinarily reside in the vicinity of the Tribunal.[14] At most, such unforeseen courtroom availability may be used by the Chambers for dealing with motions and other matters that require relatively little courtroom time. And it appears that this is done whenever possible.

(c) Number of judges

40. Just as courtroom availability is a limiting factor affecting, *inter alia*, the length of pre-trial detention, the same is true of the number of judges comprising the Chambers of

[13] This and the previously mentioned obligations of the Prosecutor are continuing in nature and reflect the exactingly high level of due process for accused persons mandated by the Statute, though some believe the level should be even higher (see Falvey, "United Nations Justice", 19 *Fordham Int'l L.J.*475 (1995)). Nevertheless, the obligations appear to be excessively onerous and time consuming in that the Prosecutor is compelled to attempt, on an ongoing basis, to predict what in her possession might be material to the defence before she has any information as to what the defence will be.

[14] Other obligations of defence counsel can also account for delays.

both Tribunals. A few years ago, the United States General Accounting Office devoted nine months to a study of the operations of ICTY and concluded that the capacity of the Tribunal in terms of number of judges and courtrooms was inadequate to handle its workload without significant delays. Subsequent to that report, a third Trial Chamber in both Tribunals was created by the Security Council in 1998 and additional courtroom space was also made available. Although this has, of course, improved the situation somewhat, the workload of both Tribunals has also increased significantly and there still remains a serious question as to the ability of three Chambers to overcome the problem of delayed trials. In this regard, the Expert Group has been informed that, as things stand, most of the ICTY indictees first taken into custody in the second half of 1999 can expect to have their trials begin by or in 2001. In ICTR, it is expected that proceedings with respect to some of the current detainees will begin in 1999 and all are expected to be completed by 2003, but it is difficult at present to predict further developments. Obviously, if more Trial Chambers and courtrooms were available, the delay could be reduced but no proposals along these lines have been made.

41. ICTY has indicated an intent to seek an amendment of its Statute to provide two additional judges for the Appeals Chamber. If they are authorized, that may ease to some degree the situation of the Trial Chambers. First, the need would be lessened for the present temporary assignments of ICTY Trial Chamber judges to the Appeals Chamber, as the workload of the latter continues to expand. Second, resolution of interlocutory appeals which, at present, cause delay in the commencement of a trial or suspension of a trial in progress would be expedited. Furthermore, appeals could be expedited if the statutory number of judges were assigned exclusively to the Appeals Chamber. This matter is discussed more fully in paragraphs 105 and 106 below.

42. The number of Trial Chamber judges available for a given case is affected by an aspect of the practice of both Tribunals regarding disqualification of judges. Article 19 of the ICTY Statute and article 18 of the ICTR Statute require that when an indictment is presented by the Prosecutor it must, before an arrest warrant is issued, be confirmed by a member of a Trial Chamber who is satisfied that a prima facie case has been established by the Prosecutor. This has been interpreted to mean that there are reasonable grounds to believe that the accused has committed the crimes alleged. The procedure is similar to that followed in many national jurisdictions involving a preliminary hearing before a magistrate or other judicial officer in order to establish that there are reasonable grounds for detaining the person accused. The object, of course, is to guard against improper conduct by a Prosecutor which might otherwise result in detentions on flimsy or no grounds. However, it is thought by some that a judge called upon to confirm an indictment or to act in a case still at the investigation stage may thereby be "contaminated" and should as a result be disqualified from later proceedings in the case.

43. Although confirmation of an indictment involves nothing more than a finding that the Prosecutor has established a prima facie case which, if not rebutted, would be sufficient for a conviction, both Tribunals have concluded, though not unanimously, that a confirming judge is automatically disqualified from any further participation in the case at the trial level. It was thought that participation, even to the limited extent in indictment confirmation, requires disqualification in order to avoid a perception of bias against the accused in the subsequent trial. This has been incorporated into rule 15 (C) of both Tribunals. And since the confirming Judge's Trial Chamber presides over rule 61 proceedings (discussed further below), it would seem that the other judges would similarly be disqualified following such a proceeding. In June 1999, an ICTR proposal to remove this disqualification, though favoured by a majority of the judges, failed by one vote short of the 10 required to obtain the necessary number of votes for a rule change.

44. Until recently, a confirming judge was also disqualified from serving on the Appeals Chamber considering an appeal in the case in which the judge had confirmed the indictment. That disqualification has, by a recent rule change, been eliminated. A confirming judge is now eligible to be a member of the Appeals Chamber in a case in which he confirmed the indictment. However, the effect of disqualification practices, particularly as they may affect related cases or joinders of accused, is obviously to reduce the number of judges eligible to participate. A judge may decline assignment to a case in which a significant part of the evidence is likely to be the same as in a case on which he is already sitting. Similarly, if multiple accused are joined in one indictment but later tried separately, the judge who tried one may decline to hear a case against another. With an increasing number of indictments, the issue is apt to become more acute in reducing the availability of judges and limiting flexibility, particularly when the need to replace a judge because of illness or otherwise arises.

45. The Expert Group recommends that further consideration be given by the Trial and Appeals Chambers to whether confirmation of an indictment should automatically result in disqualification of the confirming judge. It is difficult to understand why, in view of the logic of the rule change permitting that judge to participate in appeals, the disqualification practice at the Trial Chamber level should continue to be observed. It appears to the Expert Group that the professionalism and integrity of the judges coupled with the very limited nature of the indictment confirmation process is more than ample guarantee of fair treatment of the accused. Indeed, attaching credence to any perception of bias on the part of the confirming judge appears to the Expert Group to go to an unwarranted extreme.

46. The Expert Group notes that, under rule 65 of both Tribunals, a judge considering the question of provisional release of an accused is not deemed to be disqualified thereby from participation in later stages of the case despite the possibility that provisional release issues may entail examination of and conclusions by the judge with regard to factual aspects of the case. In addition, a judge considering a request by the Prosecutor under rule 40 *bis* for the provisional detention of a suspect is not similarly disqualified notwithstanding that in dealing with the request the judge has to make a determination under rule 40 *bis* B (ii) as to whether "there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction."It does not seem to the Expert Group that a material difference exists between the foregoing and the sort of preliminary consideration involved in indictment confirmation. From a practical standpoint, the Expert Group's recommendation would have the advantage of conserving needed judicial resources to aid in expediting trials of accused in detention without infringing the rights of any accused.

47. A more far-reaching (and arguably cost-effective) proposal has been advanced by an ICTY Defence Counsel Association for the appointment of single independent investigating judges on an ad hoc short-term basis who would handle the entire pre-trial process as well as collateral matters, such as contempts committed outside the presence of the court, with their rulings being subject to appeal directly to the Appeals Chamber. This proposal would require amendment of the Statute.

48. Of course, the use of temporary judges, perhaps selected from the judges who previously served on ICTY or ICTR, is another option for consideration as a means of dealing with undue delay in the commencement of trials and lengthy pre-trial detention. It is touched on further in paragraph 106 below in our discussion of the Appeals Chamber.

(d) Preliminary and other pre-trial motions

49. Under rule 72 of the Rules of Procedure and Evidence, challenges regarding either Tribunal's jurisdiction, alleged defects in the form of the indictment, severance of counts of an indictment or requests for separate trials and objections to or refusals of assignment of counsel must be raised by written motion before ICTY within 30 days after disclosures by the Prosecutor under rule 66 (A) (i), and before ICTR within 60 days. Each such motion then triggers time periods for answers and replies and, of course, each motion and related interlocutory appeal, if any, must be resolved before commencement of trial. Preliminary and other motions have been common before both Tribunals. Indeed, in *Tadić* a jurisdictional motion delayed the beginning of the trial for one and one half months and the Trial Chamber's judgement was appealed, delaying the trial for an additional one and one half months. Motions challenging ICTR jurisdiction and resulting interlocutory appeals in *Kanyabashi* and in *Nsengiyumva*, delayed proceedings for approximately nine months in those and related cases.

(e) Other judicial commitments

50. Depending on the workload of judges of a particular Trial Chamber in connection with obligations associated with other cases, the scheduling of a trial may be delayed if it is not possible for another judge to be assigned temporarily for that trial to that particular Trial Chamber.

(f) Provisional release and trial *in absentia*

51. Some indictees have been incarcerated for almost three years awaiting trial. This has naturally given rise to serious concerns regarding the generally recognized right to a speedy trial. Indeed, article 21(4) (c) of the ICTY Statute and article 20 (4)(c) of the ICTR Statute guarantee the right of an accused "to be tried without undue delay". The Rules of Procedure and Evidence provide for the possibility of provisional release of an indictee on bail and other conditions. Such a release may be ordered only in exceptional circumstances and if the Trial Chamber is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. The circumstances of the cases before both Tribunals have been such that it has been difficult for indictees to satisfy the Trial Chambers with respect to these matters, though long-term provisional release has been granted by ICTY to two accused and a similar short-term release was granted to another. This situation does not seem likely to change. Indeed, if there were a surge in the number of indictees taken into custody, the limited United Nations detention facilities at The Hague or Arusha could quickly become overtaxed, to say nothing of the potential effect on the capacity of the Tribunals.

52. Apart from expediting proceedings, it is difficult to envision a satisfactory solution to this problem unless and until it becomes possible for the Tribunals to rely on States in the region and elsewhere to guarantee that indictees will be produced for trial and will comply fully with provisional release conditions imposed by the Tribunals. In another ICTY case, it appears that four accused might be provisionally released if State authorities agreed to undertakings proposed by the Trial Chamber. Bail alone would not appear to be sufficient.

53. In some national jurisdictions, including those in which trials *in absentia* are prohibited, an accused who appears in court at the beginning of a trial may expressly waive or be taken to have waived the right not to be tried *in absentia* (see, e.g., *Crosby* v. *U.S.*, 506 U.S. 255 (1993)). Hence if an accused is then provisionally released and absconds, the trial may go forward to a conclusion in his absence. If convicted, the accused may be sentenced and be required to serve his sentence upon being apprehended. In some national

systems, such a trial would require (Polish Code Sec. 147), permit (German Code Sec. 286; Turkish Code Sec. 273) or prohibit (French Code Sec. 630) the presence of defence counsel, and in Germany, France and Poland, if the accused later appears in court, a guilty verdict reached *in absentia* will be set aside and the case retried.

54. Were the Tribunal to conclude that the right of an accused to be tried in person may be waived at or following his initial appearance, it might wish to consider a rule that would expand the "exceptional circumstance" possibility for provisional release to avoid the unduly long pre-trial detention of an accused who had voluntarily surrendered following public notice of his indictment.[15] This might facilitate the provisional release of some indictees and in such cases reduce unduly long pre-trial detentions. But it would seem essential to include defence counsel in a solemn commitment binding them to participate in a trial *in absentia*, should one occur, and to conduct themselves in a proper manner in full compliance with their professional duties and with integrity.

55. In this connection, it should be noted that questions have been raised as to whether rule 61 of the Rules of Procedure and Evidence of ICTY and ICTR infringe on the rights of accused under articles 21(4)(d) and 20 (4) (d) of their respective Statutes by being equivalent to a trial *in absentia*.[16] Under rule 61, which describes the procedure in cases of failure to execute a warrant, the judge who confirms an indictment is required to invite the Prosecutor to report on the measures taken if, within a reasonable time after issuance, a warrant of arrest has not been executed. If the judge is satisfied that all reasonable steps to arrest the accused have been taken, the judge is required to order that the indictment be submitted to the confirming judge's Trial Chamber in open court together with all the evidence that was before the judge who initially confirmed the indictment. The witnesses whose statements were submitted to the confirming judge may be called upon to testify. If the Trial Chamber is satisfied from that together with any additional evidence tendered by the Prosecutor that there are reasonable grounds to believe that the accused has committed crimes charged, the Trial Chamber must so determine and have the relevant parts of the indictment read out by the Prosecutor with a description of the efforts to effect personal service of the indictment on the accused.

56. The Trial Chamber is then required to issue an international arrest warrant for the accused, which is to be transmitted to all States. Provisional measures may then be adopted by the court to freeze the assets of the accused. (Such measures were, however, adopted in a recent ICTY case, under rule 47 (h) read in conjunction with article 19 (2) of the Statute, without a rule 61 proceeding.) In addition, if the Trial Chamber is satisfied that the failure to effect personal service of the indictment was attributable in any way to failure or refusal of a State to cooperate with the Tribunal, the Trial Chamber is required to so certify and the President of the Tribunal is required to notify the Security Council.

57. As indicated in paragraph 43 above, the Trial Chamber in a rule 61 proceeding would not be the one presiding over a future trial of the case because of its role and that of the

[15] If, in a provisional release hearing, the Trial Chamber was satisfied that (a) the accused had freely and knowingly consented to trial *in absentia*; and (b) the personal circumstances of the accused, including character, and integrity as well as formalized State guarantees for cooperation and for his appearance, bail and other appropriate conditions, were such that the likelihood of his not appearing for trial was minimal, it might be in a better position to conclude that its provisional release standard under rule 65 had been met. And in the event that the accused did not appear for trial, his prosecution could nevertheless go forward to a conclusion, he having previously agreed to that.

[16] Rule 61 proceedings have been held thus far in the following ICTY cases: *Nicolić* (indictment No. 10), *Karadzić* and *Mladić* (indictment Nos. 7 and 15), *Martić* (indictment No. 8) and *Rajić* (indictment No. 9). No ICTR rule 61 proceedings have yet been held.

confirming judge. And since the rule 61 Trial Chamber makes no determination of guilt or innocence, the proceeding is utilized essentially to repeat what the confirming judge previously found, i.e., reasonable grounds for believing that the accused committed the crimes in question, and it is difficult to conclude that the rule 61 proceeding is equivalent to a trial *in absentia*. This is especially true since the evidence adduced by the Prosecutor under the rule 61 procedure is unlikely to be the entire evidence that would be adduced in a subsequent trial.[17]

58. When the cooperation of States in the apprehension of indictees is lacking, as has often been the case, one of the Tribunal's recourses, if the accused has not successfully "gone underground", is an international arrest warrant and a report to the Security Council. The rule 61 procedure ensures that neither an international arrest warrant nor a report to the Security Council would be made without careful rule 61 deliberation. The procedure also serves another important purpose. It provides an opportunity for victims to tell their stories in court and thereby make known to the world the criminal conduct to which they have allegedly been subjected. Correspondingly, it provides an opportunity for the public to be made aware of these events in a dramatic fashion. These were seen as important values by the Chambers, especially in the early stages of the Tribunal when there was a need to publicize its work and the nature of the atrocities.

59. There is, on the other hand, an opposing view which holds that the rule 61 procedure borders on trial *in absentia*, sends a signal that the Prosecutor has no expectation of ever trying the indictee and imposes a needless cost burden on the Office of the Prosecutor. Moreover, it is thought disadvantageous to the extent that it involves premature exposure of evidence and may lead to witness fatigue and unwillingness to reappear at a trial. And if the current disqualification practice remains unchanged, it leads to disqualification of the Rule 61 Trial Chamber from involvement in a later trial of the case.[18] For these reasons, opponents of the procedure consider that its objectives could largely be achieved through public relations by the Prosecutor alone.

60. On balance, the Expert Group concludes that the procedure is not equivalent to trial *in absentia*.[19] While the rule 61 procedure could be abandoned without any significant diminution in Tribunal effectiveness, its continued sparing use is clearly within the

[17] The rule 61 procedure might usefully be amended to permit evidence of a witness adduced by the prosecution to be utilized in a subsequent trial following the arrest of the accused if, in the interim, the witness has died, cannot be found, is incapable of giving evidence or cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable. To protect the interests of the accused, the Expert Group recommends that counsel be assigned to represent the accused during the rule 61 proceedings.

[18] Alternatively, the rule 61 procedure could be amended to vest in the confirming Judge *alone* the power, upon application by the Prosecutor and on satisfaction of the judge, to issue an international arrest warrant and order the freezing of the assets of the accused. This would avoid the disqualification of the entire Chamber in a subsequent trial and, by relieving the Prosecution of the need for witness testimony, shorten the proceedings and avoid the possibility of repetition.

[19] There appears to be a view supported by the practice of various States and by the historical background of trial *in absentia* that, in non-capital cases under circumstances such as those confronting ICTY, trials *in absentia* with appropriate safeguards, notably adequate advance notice to accused, might be an acceptable solution to what otherwise appears to be an insurmountable difficulty in obtaining custody of indictees. See "The administration of justice and the human rights of detainees (E/CN.4/Sub.2/1997/20/Rev.1), para. 35. See also Starkey, "Trial in Absentia", 54 *N.Y.S. Bar Journal* 30 (1982); Cohen, "Trial in Absentia in Capital Cases", 36 *Florida Law Review* 273 (1984); "Note: The International Criminal Court and Trial in Absentia", 24 *Brooklyn J. Int'l L.* 763 (1999); "Report of the International Law Commission on the work of its forty-sixth session, chap. II, Draft Statute for an International Criminal Court", art. 37 (2) (A/49/355).

discretion of the Tribunals and is justified in the current circumstances of inadequate State cooperation.

2. Prolonged trials

(a) Knotty legal issues

61. Once started, trial proceedings are lengthened by a host of additional problems. The most important of these thus far has arisen out of the legal complexity involved in establishing guilt of one or more of the crimes proscribed by the Statute. Striking illustrations of this are to be found in the judgments of the ICTY Trial Chamber in the *Tadić* case[20] and "*Celebici*" cases, trial of the latter having extended over a period of almost 18 months, as well as in the judgement of the Appeals Chamber in *Tadić*. The two Trial Chamber judgements comprise respectively 319 and 452 pages plus annexes and contain 799 and 1,291 numbered paragraphs. The Appeals Chamber judgements in *Tadić* contain 399 numbered paragraphs. In ICTR, the *Akayesu* trial and sentencing extended over a 22-month period; the judgement comprised 294 pages and the appeal documents sent to The Hague fill 48 binders. *Kayishema/Ruzindana* took over 25 months and the judgement was 256 pages in length. Appeal documents fill 101 binders. The *Rutaganda* trial lasted for 27 months, though this was, in part, attributable to illness of the accused or his counsel; judgement is yet to be delivered.

62. Annex III to the present report contains the table of contents of the "*Celebici*" Trial Chamber judgement,[21] currently being appealed with initial appeals briefs of four parties totalling over 1,200 pages. The *Tadić* Trial Chamber Judgement is quite similar. Both show quite strikingly how carefully and how extensively the Chambers are called upon to sift through voluminous testimony and exhibits dealing with the complex and sometimes diffuse events involved in a multi-count indictment. They also illustrate the complex variety of legal issues presented under the operative provisions of the Statute. The resolution of such issues and the underlying factual matters is no simple matter.

63. Another ICTY case, *Blaskić*, in which the trial was completed at the end of July 1999, also appears likely to produce a lengthy and complex Trial Chamber judgement. The *Blaskić* trial began 24 June 1997. Between that time and its conclusion in 1999, the trial was prolonged (a) by the illness of one of the judges, who was eventually replaced at the end of January 1999, (b) by numerous motions and (c) by the fact that close to 150 witnesses testified and hundreds of exhibits were introduced. The trial record consists of close to 20,000 transcript pages. Indeed, the trial brief of the Prosecutor alone comprised over 1,000 pages.

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[20] Over two years elapsed between initial appearance of the accused after indictment and issuance of the judgement of the Trial Chamber, and more than two additional years elapsed before the judgement of the Appeals Chamber. A combination of extraordinary circumstances, including the illness of a judge, changes of defence counsel, efforts to have the trial reopened for the introduction of voluminous additional evidence, conflicts between defence counsel and co-counsel and a disciplinary proceeding, together with the increasing workload of the Appeals Chamber and the complexity of the issues accounted for the period involved in the rendition of the appeal judgement. Among others, the issues decided included: admissibility of hearsay evidence, elements of the offences within the jurisdiction of the Tribunal, the parameters of individual responsibility and the definition of crimes against humanity.

[21] The issues in this case included the principles of interpretation applicable to the Statute and the Rules, the legal requirements for the application of articles 2 and 3 of the Statute (i.e., grave breaches of the 1949 Geneva Conventions and violations of the laws of war), the meaning of "serious" crimes, the nexus between the acts of an accused and armed conflict, the principle of *res judicata*, command responsibility under international law and the elements of offences of wilful killing/murder, mistreatment, torture, rape, inhuman treatment, cruel treatment and plunder.

64. However, some of the completed cases, particularly after more than one courtroom was available, have been shorter. In *Erdemović*, the accused pleaded guilty at his initial appearance on 31 May 1996, and the trial proceedings were accordingly completed at his sentencing on 29 November 1996. But Erdemović appealed his sentence and, on 7 October 1997, the sentence was in effect suspended when the Appeals Chamber found that his guilty plea was flawed. The case was remanded to give him the opportunity to re-plead. This led to a further proceeding on 14 January 1998, and re-sentencing on 5 March 1998. He is now serving his sentence. In the case of *Dokmanović*, who died before a verdict was rendered, the trial was completed in less than four months. And in *Aleksovski*, the trial took only 41 trial days over a 13-week period, with a total of 64 witnesses and 175 exhibits. The accused was convicted and the case is currently on appeal. In another completed case, *Furundzija*, involving rape, torture and sexual assault of a single victim, the trial began on 8 June 1998, lasted 14 days and ended with a conviction on 12 November 1998, after having been reopened briefly on 9 November 1998. This case is also on appeal. Similarly, the *Musema* trial before ICTR began on 25 January 1999 and ended in five months on 28 June. Judgement is expected shortly.

(b) The Prosecutor's heavy burden of proof

65. From the standpoint of the prosecution, its position has been that, in order to carry out its mandate faithfully, it has no choice but to indict for as many crimes as appear to have been committed or to combine alleged individual offences into broad categories such as genocide and crimes against humanity, and to introduce as much evidence and as many witnesses as appear necessary to establish guilt beyond a reasonable doubt. Were a Trial Chamber erroneously to exclude evidence and later wrongly to acquit an accused on the ground of insufficient evidence, this might lead to a retrial ordered by the Appeals Chamber with the associated emotional burdens on witnesses of having to repeat their testimony and the corresponding drain on prosecutorial resources. Some inkling of the dimensions of what the nature of the prosecution burden of proof and the defence response produces may be gleaned from the fact that in ICTY proceedings during 1997 and 1998, 699 witnesses testified and their testimony covered almost 90,000 pages of transcript. In the absence of authoritative guidance from the Appeals Chamber enabling the prosecution to reduce the size of its case, without fearing that it will be found to have failed to sustain its burden of proof, it is very difficult to fault the prosecution's position. And this, of course, has a significant bearing on the optimum use of prosecution counsel and support staff.

66. It is anticipated that the guidance provided by the *Tadić* judgement will significantly clarify and, hopefully, reduce the amount of evidence needed to be submitted by the parties in similar cases, and thus shorten trials. A similar result may be expected from the outcome of the *Akayesu* appeal. In an ICTY case in pre-trial proceedings prior to the *Tadić* judgement, the Trial Chamber was given an initial estimate by the parties that over 500[22] witnesses would be called to testify. At the urging of the Trial Chamber, the parties have since substantially reduced their estimated number of witnesses. And the Trial Chamber apparently intends to restrict further the number of witnesses in order to try to avoid another multi-year trial. Whether and to what extent the Trial Chamber will succeed remains to be seen.

[22] One reason for such numbers is concern by the parties that if a witness' name is not listed and the need for that witness' testimony becomes acute at a later stage of the trial, the party may be precluded from calling the witness at the appropriate time.

(c) Defence in the adversarial system

67. The prosecution's case is only one aspect of the trial process. There is also the defence. The common law adversarial system of criminal trials, which one judge has described as more of a combat situation between two parties than the protection of international public order and its values under the control of the court, is largely reflected in the Statutes of the Tribunals and in their Rules of Procedure and Evidence. This, coupled with the presumption of innocence and the principles relating to self-incrimination, results in accused, as is their right, not only under the Statutes, but also under basic human rights law, being uncooperative and insisting upon proof by the Prosecutor of every element of the crime alleged.[23] From the standpoint of an accused, this represents optimum use of defence counsel. In turn, this reality is one of the factors contributing to the extensive nature of prosecutorial and defence investigations which often continue in distant places even after trials start and which have sometimes been conducted under precarious security conditions in locations still at war or gripped by the tensions of war. And this in itself leads to delays when there is hesitant or negative cooperation by the State involved. Moreover, it is not uncommon for accused to believe that it is in their interest to engage in obstructive and dilatory tactics before and during trial. The crediting of detention time against the ultimate sentence may also bear on these tactics, along with the remuneration to defence counsel for legal services, which is only in small part paid on a lump-sum basis, and mainly on the basis of time spent.[24]

68. One ICTY Trial Chamber session observed by members of the Expert Group involved a request for an evidentiary hearing by an accused. The claim supporting the request for a hearing was that the individual in custody was not the person named in the indictment. If substantiated, such a claim would obviously have established a serious mistake on the part of the prosecution and would have warranted the immediate release of the individual in custody.

69. At the hearing scheduled for the introduction of evidence, the situation was not quite as represented in the request for an evidentiary hearing. At the hearing, counsel for the individual in custody withdrew the request for an evidentiary hearing while continuing to maintain that the individual was not the person named in the indictment. It turned out that clerical errors resulting in an erroneous birth date and one other minor clerical error had been made in the documents relating to the individual. This appeared to be the ground for a contention that he be released. The request for an evidentiary hearing, however, caused the prosecution to bring witnesses to establish the identity of the accused. After a brief recess, the Trial Chamber denied release. In short, the Trial Chamber was required to hear two witnesses, presumably from afar, regarding a matter for which, in the opinion of the Expert Group, testimony should not have been required. To the extent that this episode is illustrative of issues which have beset the Trial Chambers in motions or otherwise, it helps to explain the protracted nature of Tribunal proceedings.

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[23] In one of the trials before ICTY in which counsel for the accused was cooperative and the Chambers utilized a provision of its Rules enabling it to obtain witnesses' statements in advance of their court appearance, the Trial Chamber exercised considerable control over the length of courtroom testimony and the trial was completed in about three months.

[24] The Expert Group suggests that the amount of legal fees allowed might properly take into account delays in pre-trial and trial proceedings deemed by the Trial Chamber to have clearly been caused by obstructive and dilatory tactics. This is not to recommend that the Chambers become enmeshed in all of the details of remuneration of assigned counsel, but rather that they simply exercise an oversight supervision in these cases with such direction to the Registrar, as they deem appropriate, for taking matters of this nature into account in arriving at the legal fee to be paid.

(d) Excessive motions

70. It is not surprising for all of the above reasons that in the proceedings before both Tribunals thus far, a higher number of motions by the defence as well as the prosecution than might normally be expected has occupied the Trial Chambers. In 1997 and 1998, for example, there were over 500 pre-trial motions, orders and applications in ICTY, many of which caused delay. In ICTR, approximately 200 pre-trial motions have been filed over the past two years. Moreover, even though pre-trial matters and motions during a trial may not precipitate trial adjournments, they tend to slow the pace of ongoing trials and prolong them.

71. The Expert Group was informed that, in the early stages of the work of the Tribunals, a large number of motions was to be expected since many questions of procedure and practice had to be settled. This period would seem to have now passed and action needs to be taken to curb excessive motions. In the view of the Expert Group, excessive motions might be curtailed by a rule requiring that before any motion is presented, it first be discussed by the prosecution and the defence, between themselves, in an effort to resolve the matter by agreement without court intervention. If a motion then proves to be necessary, the Trial Chamber should be informed of the nature and reasons for the inability of the parties to resolve the matter by agreement. In addition, the Chambers might wish to consider the so-called "rocket docket" techniques utilized by the United States District Court for the Eastern District of Virginia which consist of a combination of local rules, operating procedures and judicial resolve to move cases expeditiously (see Terence P. Ross, "The Rocket Docket", 22 *Litigation*, No. 2, 48 (1996). For example, all motions capable of being resolved before trial must be submitted within 11 days after initial appearance, or such other time fixed by the Court, and the response time is the same. The Court's docket is tightly controlled and trials are scheduled early. Moreover, the Court has zero tolerance for dilatory tactics and insists on strict compliance with Court rules and deadlines. Motions and other issues are disposed of rapidly by the Court.

72. Another device for managing motions before trial which the Chambers might wish to consider adapting for use by the Tribunals is the "omnibus hearing" (see Raymond T. Nimmer, *Prosecutor Disclosure and Judicial Reform: The Omnibus Hearing in Two Courts* 1 (1975)).[25] The process "was designed to increase fairness and decisional finality while also promoting speedy disposition of cases and more efficient use of judicial time" (idem). Omnibus hearing procedures generally start with discussions between the prosecution and defence to exchange information and to deal with other matters. At the omnibus hearing, each party files a "checklist motion" with the court and those grounds that should have been known and raised at the hearing but were not raised are waived. The judge then decides those motions that do not require evidentiary hearings and sets a date for those in which a hearing is needed. Hearings are set as soon as possible and the judge makes an effort to schedule motions for a single appearance or a minimum number of appearances. A third stage involves a pre-trial conference to discuss the specifics of the upcoming trial.

73. Annex IV to the present report contains the "checklist motion" form used in the omnibus hearing. Some of the items are already dealt with under the Rules of both Tribunals. Others are not germane since they are tailored for criminal proceedings in the United States. However, the form might be useful as a template to be modified by the Chambers to suit the characteristics of Tribunal proceedings. It could then perhaps serve as a structure to help expedite trials.

[25] See American Bar Association, *Standards for Criminal Justice*, Standard 11-5.1 (1978). No analogous rule was available in the recent edition of the *Standards*.

74. Some of the ICTY Trial Chamber judges are now requiring that, unless otherwise ordered by the Trial Chamber, motions be made orally and responded to orally. This significantly reduces the amount of document translation. And except in unusual circumstances, rulings are issued orally. In ICTR, rule 73 now permits the Trial Chamber or one of its judges designated by the Chamber to rule on motions on the basis of briefs unless it is decided to hear the motion in open court. Such methods, together with greater judicial control, as discussed below, are likely to expedite proceedings.

(e) Judicial control

75. In ICTY trials observed by members of the Expert Group for relatively short periods, it was noted that the interrogation of witnesses, other than experts, seemed to be characterized by the absence of crisp, focused questions and by long, rambling answers tending to be narratives, at times vague, repetitive and irrelevant. One of the judges interviewed indicated that this was not atypical. Such answers seem to be evoked by vague, multiple or compound questions and the relative infrequency of objections to them. There appears to be a disposition to tolerate this procedure, particularly in the case of testimony by victims, the thought being that allowing them to tell their stories in their own way has a salutary cathartic psychological benefit. In addition, some judges may be needlessly sensitive to the potential for criticism if they intervene actively to exercise greater control over the proceedings.

76. But there is no apparent reason why it would not be open to the court to ask counsel for either party whether there is any dispute about a particular piece of evidence. If counsel informally indicates that there is not, time will be saved and the issues will likely be narrowed. If the reply is that counsel is unable to state whether the evidence is disputed, this too may narrow the issues without interfering with the right of the accused to remain silent or later give evidence. In the view of the Expert Group, it is necessary for the Chambers to increase their degree of control by firmly utilizing existing rules, such as rule 65 *bis*, for status conferences, rules 73 *bis* and *ter* for establishing trial format in pre-trial and pre-defence conferences, and ICTY rule 90 (G) or ICTR rule 90 (F), enabling judicial control over the presentation of evidence, or by promulgating and implementing, if necessary, further rules to make it clear that they intend to take a more active role in trials by questioning counsel and witnesses, cutting off irrelevant or repetitive testimony and excluding witnesses whose testimony is cumulative or of no material assistance with respect to disputed issues.[26] Otherwise, trial transcript pages will continue to number in the tens of thousands, hundreds of witnesses will continue to testify and hundreds of exhibits will continue to be submitted. In short, the problem of prolonged trials along with their inevitable cost consequences and the ripple effect in other areas such as lengthy pre-trial detentions will persist.

77. Judges interviewed by the Expert Group in ICTY and ICTR expressed the belief that the prolonged nature of Tribunal proceedings was attributable to a significant degree to not enough control having been exercised over the proceedings by the judges, and also to the manner in which the prosecution and defence presented their cases. To be sure, in common law adversarial criminal proceedings it is the parties who determine the manner in which they will conduct their cases, the number of witnesses and exhibits, and the amount of testimony to be elicited. The extent of cross-examination and rebuttal is also largely in the

[26] Offers of proof (i.e., when an objection to evidence is sustained, the party offering the evidence may summarize briefly for the record what the evidence would have shown, if admitted, so that an Appeals Chamber is better able to assess the Trial Chamber ruling) would protect the rights of the party whose evidence was excluded.

hands of the parties. Moreover, the effect of the presumption of innocence and the right of an accused to remain silent, both of which are enshrined in the Tribunals' Statutes, as well as in article 14 (2) and (3) (g) of the International Covenant on Civil and Political Rights,[27] place a substantial burden on and corresponding control in the prosecution with respect to how it will present its case. From the beginning, the judges have been scrupulous in their respect for the distribution of responsibilities implicit in the common law adversarial system and have tended to refrain from intervening in the manner of presentation elected by the parties. This surely contributed to the length of the proceedings and is recognized as having done so by the judges. Yet this is not by any means intended to suggest that case management improvements cannot be made within the framework of the adversarial system. For example, one ICTY and one ICTR Trial Chamber have followed a practice, codified to some extent in rules 73 *bis* and *ter*, but which may suggest a further refinement of those rules, calling upon the parties to deliver to the judges copies of the witness statements and other documents identifying points of dispute and agreement between them. This has enabled the Trial Chambers, in advance of the trial, to be acquainted with the evidentiary material as well as the major points in dispute. The result has been greater expedition of the proceedings and more active participation by the judges.

78. Some judges in ICTY and ICTR, by forcefully utilizing the rules referred to in paragraph 76 above, which provide the court with control over the mode of testimony and the presentation of evidence, have been moving in the direction of asserting greater control over the proceedings, and the Expert Group recommends that this be accelerated and become general practice. Greater control might also be exercised in respect of adjournments; the Expert Group noted in this regard, for example, that in four cases in ICTR in which trial proceedings had lasted for as long as 24 months, almost 90 per cent of that time was, on average, attributable to adjournments granted by the Trial Chamber for one reason or another. Such increased control would in no sense be inconsistent with the Statutes or with the unique character of the Tribunals as International Tribunals drawing upon common law and civil law traditions. In the latter and even in the former, particularly in non-jury cases, it is not unusual for the court to take a strong hand in the entire process to prevent undue delay in the final disposition of the proceeding while guiding the development of the case in a manner that will provide maximum assistance to the court in enabling it to reach a just decision and at the same time protect the legitimate interests of the accused. In this connection, the Expert Group must note that, in October 1997, when there was a surge in the number of ICTY detainees, the President promptly appointed a working group aimed at developing procedures for fair and expeditious trials. As a result, during the July 1998 ICTY plenary, 8 new rules were adopted and 26 others were amended. This was preceded by a two-day workshop on trial practices attended by experienced trial lawyers and judges from both civil and common law jurisdictions to explore the possibility of additional steps to expedite trials. And following the July 1999 plenary, the President appointed a Trial Practices Working Group to examine the efficiency of the Rules and to make recommendations for further improvement to expedite trials. It is clear that the trial process is being monitored on an ongoing basis.

(f) Free legal assistance

79. Articles 18(3) and 21(4)(d) of the ICTY Statute and articles 17 (3) and 20 (4) (D) of the ICTR Statute provide that both a suspect and an accused are, if indigent, entitled to have legal assistance assigned to them without cost (see also Article 14 (3)(d) of the International Covenant on Civil and Political Rights[27]). This is the situation in which most suspects and

[27] See General Assembly resolution 2200 A (XXI), annex.

accused find themselves and it accounts for a significant portion (over 10 per cent) of the annual budgets of the Tribunals. Unfortunately, apart from its financial consequences, the practice of providing legal counsel at no cost to the accused may also have had a generally negative effect on the length of Tribunal proceedings. The Expert Group has been informed of indications, difficult, if not impossible, of verification, that some assigned counsel (whose remuneration is in excess of normal levels of attorneys' fees in their own countries) seem to have generated far more legal activity than might otherwise be anticipated in both pre-trial and trial proceedings. If it is occurring, the phenomenon of "excessive lawyering" where legal fees are paid by a governmental entity in a legal aid programme is by no means novel (see Judith A. Osborne, *Delay in the Administration of Criminal Justice, Commonwealth Developments and Experience*, pp. 31-32 (1980) (microform). The effect, of course, is that delays result and trials lengthen. There are in addition indications (again not verifiable by the Expert Group) of financial arrangements between accused and their counsel under which a portion of the amounts received by counsel from ICTY are shared with the accused through, for example, contributions by counsel to the defendant's relatives. Indeed, this is said to be influential in the selection of counsel by accused and may play a part in periodic efforts by accused to dismiss counsel and select other counsel. Because of the ethical implications of such financial arrangements, if they exist, the Expert Group has invited the attention of the ICTY Registrar's Advisory Panel to the matter for consideration of a possible modification of the Code of Professional Conduct.

80. Despite belief that these problems exist, it is exceedingly difficult for the Tribunals to deal with them. In view of the statutory provisions dealing with entitlement to counsel and its central importance to the rights of the accused, the subject is extremely sensitive and the Tribunals are understandably most reluctant to take steps which might be seen as interference with the rights of an accused or a suspect.[28] The subject will be discussed further in the portion of the report dealing with the Registry (see paras. 216-217 below).

81. While the fee-splitting suspicions described in paragraphs 79 and 80 above do not appear to be present in ICTR, other matters related to defence counsel also delay proceedings. In particular, these have related to the scope of the right of an accused under articles 17 (3) and 20 (4) (d) of the ICTR Statute to select a counsel of his choice, and its relationship to the list of assigned counsel developed by the Registry. Judicial guidance on this issue has been sought. This is further developed in paragraphs 224 to 233 related to the Registry.

(g) Common law/civil law combination

82. Another area of complexity experienced by the Tribunals stems from the structure of the Statutes and the Rules of Procedure and Evidence, combining as they do characteristics of the common law adversarial system and the civil law inquisitional system of dealing with criminal proceedings. Many of the judges interviewed by the Expert Group recognized that to a greater or lesser degree this feature complicated the work of the

[28] The Expert Group believes, as indicated in footnote 23 above, that the Chambers should consider the possibility of a rule calling for greater oversight with regard to remuneration when flagrant, frivolous or dilatory conduct on the part of counsel or abuse of the Tribunal's processes is found. Doubtless the inherent power of the Tribunal would encompass such measures. In cases of prosecutorial misconduct, the Tribunal already may recommend appropriate corrective personnel measures and should be able to impose sanctions.

Tribunals[29] and tended to prolong their proceedings. This is not to say that the judges maintain that one system is intrinsically better than the other, though, interestingly, a judge from a common law background opined that in the unique circumstances of ICTY, the civil law model might have been better suited to its work. There is a growing consensus among the judges that as the Tribunals develop and mature as international organs, they will have to move in the direction of drawing upon and incorporating into their own jurisprudence the most helpful aspects of the two systems. But this is a slow process, made so in the view of the Expert Group, largely because the legal culture and background of the judges who come from one system tends to make them cautious about quickly or uncritically accepting features of the other system. The Statutes are largely, though not entirely, reflective of the common law adversarial system, and the future evolution of the Tribunals' procedural jurisprudence, while necessarily complying with their Statutes, is apt to adopt aspects of the civil law model. In some respects, it seems to be doing so already. Some civil law models can doubtless deal with criminal law cases more expeditiously than the common law adversarial system. Since all the accused before the Tribunals are from civil law backgrounds, it could hardly be objectionable to them. It may be noted that a gradual convergence of important dimensions in both systems seems to be occurring through procedural reform efforts in national criminal law. While aspects of the adversarial model have received impetus in some civil law countries, there is active discussion in some common law jurisdictions of the advantages of an examining magistrate in pre-trial proceedings for the purpose, *inter alia*, of inquiring into the objective truth (see Hatcher, Huber and Vogler, *Comparative Criminal Law Procedure*, The British Institute of International and Comparative Law (London, 1996)).

3. Additional measures for improvement

(a) Pre-trial judges

83. In ICTY and ICTR, one of the Trial Chamber judges is now designated as pre-trial judge for the Chamber, exercising oversight through meetings with counsel, efforts to reach agreement on facts, issues, witnesses, exhibits, scheduling, etc. To a limited degree, this appears to have been helpful in expediting proceedings. There is, however, a difficulty. The pre-trial judge currently is not empowered to issue rulings on behalf of the Trial Chamber requiring action by the parties. His function seems to be more in the nature of an attempt to persuade them to agree. This, however, might change if the judges decide to take a more interventionist role in controlling the proceedings. If so, the pre-trial judge could, the Expert Group understands, under ICTY rule 65 *ter* (D), act on motions under rule 73. In addition, to the extent not currently being done, the pre-trial judge could make a pre-trial report to the other judges with recommendations for a pre-trial order establishing a reasonable format in which the case is to proceed.

(b) Stipulations

84. Some judges have required that, when there is no apparent reason for a dispute as to certain facts, the party declining to so stipulate, usually the accused, explain why. This practice, if adhered to, could be quite helpful in eliminating the need for the introduction

[29] For example, lawyers trained in the civil law are apt to be unfamiliar with common law principles and procedures, and vice versa. Many of the lawyers representing the accused come from the former Yugoslavia, a civil law country, and are said to find the common law aspects of ICTY procedures disconcerting. In ICTR, a relatively large proportion of lawyers are from Cameroon, and from Quebec in Canada, where lawyers are apt to be familiar with both systems. One result is that lawyers from both traditions often have to be utilized in representing the accused. Indeed, ICTR directives encourage this.

of potentially massive amounts of evidence, particularly by the Prosecutor, to establish facts that may not really be in dispute. The difficulty is that defence counsel are apt to be reluctant to agree to much that would facilitate presentation of the prosecution's case and to insist that the Prosecutor is obliged to prove every element of her case. For example, in a pending ICTY case at the pre-trial stage, which is awaiting the outcome of an interlocutory appeal by one of the accused, the prosecution and the defence over a three-month period discussed 168 factual matters which the prosecution believed should not be in dispute. At the end, 87 were agreed upon. Defence counsel are also apt to assert that, until the proof is actually seen, there is no way for the defence to be certain that the prosecution will actually be able to prove the facts under discussion. The question then is whether the Trial Chamber could or would attempt to impose a sanction on the defence if, for example, the facts were merely of a background nature and were subsequently established by prosecution evidence without any dispute by the defence.

(c) Judicial notice

85. Trial Chambers have had occasion to consider the possible use of a form of judicial notice as a means of reducing the amount of trial time devoted to establishing background facts that have already been established in another trial. So far their approach to the matter has understandably been very cautious, for it has implications regarding the independence and potentially different views of the Trial Chambers as well as the right of the accused to contest evidence derived from a different case. In this connection, it should be noted that each Trial Chamber exercises a significant degree of discretion with regard to case management practices and there may also often be differences in perception as to which are effective in the particular circumstances of a case. Nevertheless, successive indictments and trials have often related to the same well-defined areas where criminality has followed similar or identical patterns. In the view of the Expert Group, further consideration should be given to greater use of judicial notice in a manner that fairly protects the rights of the accused and at the same time reduces or eliminates the need for identical repetitive testimony and exhibits in successive cases (see rules 94 and 94 *bis* of both Tribunals).

(d) Exhibits in lieu of testimony

86. Further consideration might also be given, perhaps by a rule change, to another practical effort that has been made, this time by the prosecution, to simplify and shorten a pending ICTY trial. In this case, the Prosecutor, relying on the Tribunal's Rules, which do not preclude hearsay evidence, wished to establish background facts regarding a number of villages in an area in which crimes were committed. Numerous villagers who could, if necessary, testify in person as witnesses had provided statements to ICTY investigators describing the facts. In an effort to shorten the proceeding, the Prosecutor elected to present the testimony of only a few witnesses and, through an ICTY investigator, sought to submit to the Trial Chamber, in the form of an exhibit, written statements of the other villagers. Predictably, the defence objected on the ground that the written witness statements were not susceptible to cross-examination even though it was then uncertain whether any cross-examination regarding the background facts would occur. The Trial Chamber declined to admit the written statements, but took steps to shorten the trial by accepting the transcripts of witnesses in other proceedings. However, it might be feasible in some cases to admit, provisionally, such an exhibit subject to the right of the defence, after reviewing the exhibit, to require the presence of witnesses whose statements the defence wished to cross-examine. Depending on the nature and outcome of cross-examination, the Trial Chamber could draw such inferences as it deemed appropriate regarding the cross-examination and awareness of this might tend to deter frivolous insistence by the defence on the production of witnesses.

(e) Voluntary statements

87. Still another attempt by the judges to expedite trials is reflected in recently adopted ICTY rule 84 *bis* providing that an accused may voluntarily make a statement, not under oath, to the Trial Chamber at the outset of the trial. No adverse inference is to be drawn if an accused declines to do so. The concept is drawn from the civil law system in which it is common for accused either to be interrogated by the examining magistrate or prosecutor, or to be invited to make whatever statement they wish about their case to a judicial officer. In one civil law system, after an accused pleads not guilty to the indictment, the prosecutor presents the case. Thereafter, the accused is asked for his or her version of the facts. Then witnesses might be heard, but only those necessary with regard to disputed aspects of the case. Civil law experience appears to indicate that such statements by the accused can have the effect of shortening the proceeding by narrowing issues, eliminating those not disputed and clarifying matters. In fact, in one recent ICTY case before a Trial Chamber, an accused's statement, made after completion of the Prosecutor's case, confirmed facts previously presented by the Prosecutor through voluminous testimony and exhibits by numerous witnesses. Had the accused made such a statement before presentation of the Prosecutor's case, the length of the trial would have been shortened substantially and many witnesses who testified would not have been needed. Whether the new rule will have this effect in the future is an open question. Counsel for accused may advise their clients to remain silent until the Prosecutor completes presentation of her case and only then, if they wish to do so, admit to the facts shown by the Prosecutor's evidence. Nevertheless, the rule change reflects a worthwhile effort by ICTY to improve case management and subsequent experience may confirm its value.

(f) Prepared testimony

88. A possible means of reducing the length of trials which the Trial Chambers might consider, especially since it appears to be contemplated by ICTY rule 94 *ter*, is encouragement of the use of prepared direct testimony by both expert and other witnesses. Instead of a witness spending days in court giving direct testimony, it would be submitted in advance, in written question and answer form, and the witness would later appear in court. The opposing party could then object to written questions and cross-examine the witness. An analogous proposal also merits consideration. The proposal would involve preparation of a dossier by the prosecution containing witness statements, with comments by the defence, to permit a selection of relevant witnesses by the Trial Chamber and admission of witness statements as documentary evidence. Were this proposal adopted, some additional translation work would probably be required and additional work by the prosecution team would also be necessary.

(g) Defence disclosures

89. Still another case management improvement, which would entail a change in rule 67 of both Tribunals, providing for reciprocal disclosure by the parties, and also affect rule 73 *ter*, providing for pre-defence conferences, should, and doubtless will, be given consideration. It would require that, following the disclosures to the defence by the prosecution with respect to its case now mandated by the Rules, counsel for the accused would be required to describe in general terms the nature of his defence, indicating the matters on which he takes issue with the prosecution and stating the reason in relation to each. If the accused failed to do so or set out inconsistent defences or if, without justification, the accused asserted at trial a different defence, the Trial Chamber could draw such inferences as appeared proper, i.e., whether a new defence was an afterthought or

whether inconsistent defences signified a lack of confidence in either. The underlying logic is that the potential for such inferences would impel counsel to disclose his true defence in a timely fashion, and this would expedite the trial by enabling the parties and the court to focus on the real issues. The suggested disclosure requirement could have an added benefit if it were the predicate for the prosecution's obligation to disclose evidence in its possession material to the preparation of the defence. At present, this obligation requires guesswork on the part of the prosecution as to what might be material to the defence, and thus can cause delay as well as the expenditure of unnecessary time and effort by the prosecution (see also footnote 12, above).

90. There is also a suggestion that counsel for the accused, when cross-examining prosecution witnesses able to give evidence relevant to the defence of the accused, should inform them of the nature of the defence if it is in contradiction of their evidence. This would save time by enabling a prompt response to the defence and could relieve the prosecution of the need to recall the witness for rebuttal after the defence finished presenting its case.

(h) Need for State cooperation

91. The foregoing factors that complicate and prolong pre-trial and trial proceedings and the possible remedies illustrate impediments that may and do impair the effective functioning and operation of a criminal tribunal simply because of the way in which the common law adversarial system operates. This assumes, of course, that a trial which is not protracted reflects the effective functioning and operation of a judicial system. Some would argue that the more important value is whether due process and the rights of the accused have been fully observed even if this involves a protracted trial. And there is ample support for that contention in fundamental human rights law as reflected, for example, in the International Covenant on Civil and Political Rights. But overshadowing these problems is the pervasive problem of obtaining State cooperation.[30]

92. In ICTY, thus far, although the Bosnian authorities (and to a lesser degree, the Croatian authorities) have largely cooperated with the Tribunal as contemplated by article 29 of the Statute, the Federal Republic of Yugoslavia and the Republika Srpska, in which many indictees appear to be living, have generally been totally uncooperative even after the Dayton Agreement in which they expressly undertook to cooperate with the Tribunal. The lack of cooperation is seen by the judges as perhaps the single most important obstacle to the effective functioning of the Tribunal. One result has been that, with few exceptions, indictees in custody have been relatively low-level figures whose alleged crimes, though serious, might have been better tried in a national court system so that the limited resources of the Tribunal could be deployed to more important cases involving leadership figures. Indeed, the Expert Group was informed that the Office of the Prosecutor would have preferred from the outset to have focused its prosecutorial activity on top leadership figures, but it was then and still is unable to obtain their arrest. This has been duly reported to the Security Council, which to date has evidently been unable to bring about the arrest of indicted major leadership figures. Moreover, the lack of State cooperation has impeded the availability of evidence and witnesses to the prosecution and to the defence, thereby affecting the length of investigations and trials.

93. The situation in ICTR is different. The Tribunal has received strong cooperation from many African and other States. Indeed, a number of States have accepted the primacy of ICTR jurisdiction over offences defined in the Statute even in the absence of national

[30] See also paragraph 25 above. It should be noted, however, that a number of States have cooperated with the Tribunals, including the agreements by them to provide prison space for convicted persons.

implementing legislation. Of the detainees now in United Nations custody, 12 had been initially arrested in Kenya, 9 in Cameroon, 2 each in Belgium, Benin, Côte d'Ivoire, Togo and Zambia, and 1 each in Burkina Faso, Mali, Namibia, South Africa and Switzerland. The degree of international cooperation afforded to ICTR can therefore be described as generally excellent.

(i) Leadership cases

94. As one of the ICTY judges has trenchantly observed, article 1 of the Statute, in empowering the Tribunal to prosecute "persons responsible for serious violations of international humanitarian law ...", has left unclear whether the future of the Tribunal should be focused on leadership cases. In the judge's view, which parallels that of the Prosecutor, the future of the Tribunal ought not consist of adjudicating the culpability of persons relatively low in the political, military or administrative hierarchy. Unavoidable early political pressures on the Office of the Prosecutor to act against perpetrators of war crimes, however, led to the first trials beginning in 1995 against relatively minor figures. And while important developments in the jurisprudence of the Tribunal have resulted from these cases, the cost has been high. Years have elapsed and not all of the cases have been completed. The Tribunal's most recently completed trial of General Blaskić, however, involved a significantly higher-level figure. Trials now actively in progress are related to the *Blaskić* case, i.e., *Kordić* and *Cerkez*, and, in a separate trial, *Kupreskić, et al.*[31] In addition, General Krstić's case is in the pre-trial stage and another General, indicted in a sealed indictment, was recently arrested in Austria.

95. In this respect, an entirely different situation obtains in ICTR. Detainees now in United Nations custody — either sentenced, tried, in trial or awaiting trial — include one former Prime Minister, 10 former Cabinet Ministers, 6 other senior political appointees, 4 senior military officers, 3 former provincial governors and 5 mayors of provincial capitals. The success of ICTR in indicting, and bringing to trial, many of the senior figures allegedly involved in the 1994 massacres has had the added effect of attracting greater attention in Rwanda itself to the proceedings of the Tribunal. This is a welcome development, since the initial difficulties and delays which confronted ICTR caused some scepticism in Rwanda as to the real chances for the success of the Tribunal.

96. There appears to be a consensus among the ICTY and ICTR judges, in which the Expert Group concurs, that despite the importance and the value of developing an international criminal jurisprudence and of victims seeing their immediate tormentors tried and punished, the major objectives of the Security Council are in large part not fulfilled if only low-level figures rather than the civilian, military and paramilitary leaders who were allegedly responsible for the atrocities are brought before the Tribunals for trial. It is thought that trials of low-level figures would fail to demonstrate the resolve of the international community and insufficiently draw the world's attention to the importance of the

[31] Although the *Kordić* and *Kupreskić* cases as well as the *Aleksovski* case mentioned above together with the *Furundzija* case might have been tried efficiently as a single case with *Blaskić* since all involved alleged crimes in the Lasva River valley within the same time-frame, the accused came into the custody of the Tribunal at different times after trials had begun for accused taken into custody earlier. The delays caused by this successive appearance of accused might have reached an intolerable degree if the prosecution had waited to try them in a single trial, particularly in view of the length of pre-trial detention that has plagued the Tribunal. The staggered manner in which indictees come into the custody of the Tribunal thus can affect Tribunal proceedings, and has done so significantly. This issue has been faced squarely in a recent announcement by the Prosecutor that she will not go forward with the trial of a Croatian indictee recently taken into custody until his co-indictee, who is in custody in Croatia, is turned over to ICTY.

humanitarian objectives underlying the work of the Tribunals. Devoting huge resources to the prosecution of "small fry" while vindicating the wholly understandable and justified emotions of individuals and families victimized by atrocities would leave major goals largely unattained. It is hoped that in time the low-level perpetrators can be tried fairly and properly for their crimes by national courts. Nevertheless, it is recognized that at the current stage that may not be possible.

97. The emphasis on ICTY leadership cases may be facilitated by the efforts of the Tribunals to develop public information programmes in the former Yugoslavia and elsewhere throughout the world regarding the work and the objectives of the Tribunals. It is likely that, except for a very small fraction of the populations of the former Yugoslavia and elsewhere, there is large-scale, if not total, lack of knowledge regarding the international humanitarian laws enforced by ICTY and ICTR. And indeed such a lack of knowledge may even extend to many in military and political hierarchies ultimately accountable for non-compliance with them. These information programmes have included the dissemination of literature, speeches, participation in conferences, seminars and panel discussions, utilization of the print, broadcast and television media through press releases and other educational communications, meetings and appearances with State officials and dignitaries, etc. As a result, there has been a growing and elevated awareness of the role of the Tribunals in protecting and enhancing humanitarian values.

98. The value of these programmes is incalculable and they should be continued. Indeed, ICTY proposes an expansion described as follows:

> "The International Tribunal now proposes to establish and maintain a programme dedicated to explaining its work and addressing the effects of misperceptions and misinformation. The programme would make available information and resources on the International Tribunal, disseminating them and encouraging debate within national and local communities and non-governmental organizations, victims' associations and educational institutions. Existing links with international intergovernmental and non-governmental organizations operating in the region would be strengthened to create a two-way channel of communication, benefiting both the International Tribunal and those institutions which currently devote resources to issues that could be more effectively resolved by direct and coordinated involvement of the International Tribunal.
>
> "This programme would comprise two components: the establishment of an outreach programme within the Office of the Registrar; and enhancing the existing capacity of the Registry's Public Information Unit in The Hague."

99. An outreach programme, funded from voluntary funds, has also been launched in ICTR. The programme includes provision of office space and equipment for a bureau of Radio Rwanda, which has enabled it to broadcast, in Rwanda, news on the proceedings of ICTR in Kinyarwanda, and also in French and English. The outreach programme also facilitates and funds, totally or partially, travel to Arusha of public opinion shapers — members of the legislative, judicial and executive branches of the Government, NGO representatives, radio-TV and newsprint reporters — to help them better familiarize themselves with the work of the Tribunal.

(j) Deferral to national courts

100. The Statutes of the ICTY (article 9) and of the ICTR (article 8) provide for both the Tribunals and the national courts to exercise concurrent jurisdiction to prosecute persons indicted for serious violations of international humanitarian law. Each of the Tribunals,

however, has primacy, and national courts are under obligation, upon a formal request by a Trial Chamber for deferral of proceedings pending before a national court, to suspend such proceedings. The accused, together with the relevant record of proceedings before the national court, is then transferred to the Tribunal for prosecution (see, in addition to the articles of the Statutes referred to above, ICTY rules 8-11, and ICTR Rules 8-11).

101. Rule 11 *bis* of ICTY makes provision for the reverse situation, by permitting the Tribunal, if it deems it appropriate, to suspend an indictment against an accused pending proceedings before the national court of a State in which the accused was arrested if that State is prepared to prosecute the case. The rule also provides that any time before the court of the State delivers its verdict, ICTY can order the State to return the accused for resumption of the proceeding before ICTY. There is, however, no corresponding provision in the ICTR Rules. The Expert Group considers this provision as a potentially useful mechanism in dealing, not only with second-tier perpetrators as the Office of the Prosecutor concentrates on leadership cases, but also in cases in which the Prosecutor may not wish to press an indictment for reasons unrelated to the guilt or innocence of the accused. Accordingly, the Expert Group recommends that the ICTR consider including in its Rules a provision along the lines of rule 11 *bis* of the ICTY Rules.

F. The Appeals Chamber

102. The Appeals Chamber has jurisdiction over appeals from persons convicted by an ICTY or ICTR Trial Chamber, or from the Prosecutor. The Statutes provide that appeals may be made only for error on a question of law invalidating the decision, or an error of fact that has occasioned a miscarriage of justice. Appeals Chamber Judgements are important in ensuring uniformity with regard to matters of law, including rule interpretation, among ICTY Trial Chambers, and among ICTR Trial Chambers, as well as between ICTY and ICTR Trial Chambers where the applicable statutory provision, rule or legal principle is the same. Although Trial Chambers may, and often do, find the views of other Trial Chambers on such matters to be persuasive, uniformity may not be achieved until the Appeals Chamber has definitively addressed them. From that point on, pending and future cases before the Trial Chambers are expected to be governed by the guidance of the Appeals Chamber. The ICTY Rules provide for a screening panel of three judges, to review applications for leave to submit interlocutory appeals. No such panel is provided for in the ICTR Rules. Under the latter, appeals, either interlocutory or from judgements, are considered by the full Appeals Chamber. In addition, if a new fact is discovered which was not known at the time of proceedings before the Trial Chamber or Appeals Chamber which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may apply for review of the judgement. A State affected by an interlocutory Trial Chamber decision may also do so if it concerns issues of general importance relating to the powers of the Tribunal.

103. For a significant period following the creation of ICTY and before the Rwanda Tribunal became active, the Appeals Chamber's workload was light. Such is no longer the case. As the workload of the ICTY Trial Chamber increased during 1998-1999 to 14 pending trials involving 29 accused, from only 7 cases involving 10 accused in 1997, the work of the Appeals Chamber has increased even more substantially. Also, as regards ICTY, during 1998-1999, 29 applications for leave to file interlocutory appeals had been filed as of 6 August 1999, which required consideration by the Appeals Chamber. Of the 29 applications, leave was denied in 13 of them; in 7, leave was granted; 5 are pending; 2 were withdrawn; 1 was rejected; and the last, a request by the Republic of Croatia, was decided on the merits. ICTY appeals were pending as of August 1999 from final judgements in the "*Celebici*",

Furundzija and *Aleksovski* cases. In the *Tadić* case, which was decided by the Appeals Chamber, the resentencing of the accused is still pending, and is scheduled to be announced shortly by the Trial Chamber to which the issue was remitted by the Appeals Chamber. As regards ICTR, as of 30 September 1999, there were five appeals pending from judgements and/or sentence and six interlocutory appeals under consideration. In addition, the Appeals Chamber has dealt with disciplinary matters and the miscellany of ancillary matters related to appeals. The Appeals Chamber anticipates possibly two additional appeals on the merits from both Tribunals before the end of 1999. Based on experience thus far with the number of appeals, the Expert Group estimates that a significant increase in the number of appeals will occur after 1999 in both Tribunals. Perhaps the heavy volume of appeals could be lessened by a preliminary screening at the outset to ensure their admissibility, i.e., that they present genuine issues of errors of law invalidating decisions or errors of fact occasioning miscarriages of justice. The Expert Group recommends that the Appeals Chamber examine the advisability of creating such a screening mechanism in an effort to eliminate baseless appeals and conserve time that would otherwise have to be devoted to them by the parties and the Chamber. Alternatively, either party might consider motions for summary dismissal in cases where it clearly appears that the appeal is frivolous, and this has been done in a number of ICTR interlocutory appeals. Such motions, when filed, should be considered expeditiously by the Appeals Chamber.

104. Appeals on the merits frequently involve complicated and significant legal issues. Some require study of very large records by the Appeals Chamber. In "*Celebici*", the record comprises over 15,000 transcript pages and hundreds of exhibits. Reference has previously been made to the hundreds of binders submitted to the Appeals Chamber in the *Akayesu* and *Kayishema/Ruzindana* appeals. Interlocutory appeals are often no less important than appeals on the merits since they can cause suspension of Trial Chamber proceedings while the interlocutory appeal is pending. The implications of this for the length of trials and the detention of indictees is obvious. Indeed, trials before ICTR were suspended for almost nine months pending an interlocutory appeal relating to the authority of the President to make changes in the composition of Trial Chambers and the effect of such changes on the jurisdiction of the Trial Chambers jurisdiction to rule on amended indictments.

105. ICTY has a total of 14 judges sitting in the Trial and Appeals Chambers. Because of instances in which Trial or Appeals Chamber judges are unavailable owing to workload, recusal or disqualification for one reason or another, or illness, ICTY Trial Chamber judges are at times called upon to sit in the Appeals Chamber and Appeals Chamber judges to sit in ICTY Trial Chambers. An incidental effect of this is that ICTY Trial Chamber judges may, under the provisions of the ICTY Statute, sit on appeals from judgements of ICTR Trial Chambers. This is by no means an ideal situation. As ICTY's active caseload grows, it makes even more complex the assignment of judges as between the Trial and Appeals Chambers. Prior to the new rule regarding the availability of the confirming judge to sit on appeals in the same case, nine different judges were required in each case to cover indictment confirmation, a single trial and an appeal in the case. In the future, one fewer, that is, eight judges will be needed. It is foreseeable that, if the increased caseload also involves an increase in cases related to others in ways that could disqualify a judge involved in one from also becoming involved in any aspect of the other, the future wait for a judge eligible to sit in the Appeals Chamber in a given case might cause further serious delay. In addition, the loss of insulation owing to judges being intermingled between the Trial and Appeals Chambers may unintentionally tend to influence the outcome of appeals.

106. In the view of the Expert Group, a permanent separation should exist between both ICTY and ICTR Trial and Appeals Chambers, with judges being assigned exclusively to one or the other Chamber for their entire term. In addition to overcoming disqualification

problems referred to in paragraph 105, this would also ensure that appeals from both ICTY and ICTR Trial Chambers would be considered only by Appeals Chamber judges. However, the Expert Group does not consider that the status of the Trial Chamber should be inferior to the Appeals Chamber, but simply that intermingling should cease, with the possible rare exception in extraordinary circumstances of an available single Trial Chamber judge being asked to sit as a member of the Appeals Chamber.

107. The Expert Group understands that the Chambers of both ICTY and ICTR are proposing for their upcoming budget an increase in legal staff assistance for the judges of both Trial and Appeals Chambers, including judicial assistants for ICTY Trial Chamber III who were unfortunately eliminated from the 1999 budget. The Presidents and the Bureaux of both Tribunals have also decided to seek the approval of the Security Council for two additional judges for the Appeals Chamber and the associated additional staff that would be required. The supporting information, which was examined by the Expert Group, appears to justify these requests, and the Expert Group recommends that they be accepted. This proposal, although helpful, might perhaps not yield as satisfactory a result as the permanent separation of the Appeals Chamber recommended in paragraph 106 above.

108. It seems evident to the Expert Group that if the number of arrests continues to increase at the same time that Kosovo generates new cases; if investigations in Rwanda yield a considerable number of new indictees; and if everything else remains as at present, without increasing budgetary resources, mainly more judges it will be extremely difficult, if not impossible, to assure that the Tribunals will be able to accomplish satisfactorily the missions confided to them by the Security Council. In this connection, one of the alternatives the Expert Group discussed with a number of the judges is the possible use of temporary judges, drawn perhaps from among those who previously served on the Tribunal or other retired experienced criminal trial judges. There are mixed feelings among the judges on this subject. Some believe that it should be seriously considered and there is at least one carefully thought-out proposal for accomplishing it. Others would approach it cautiously and still others see disadvantages in creating in the Trial Chambers possible perceptions of "second class" judges as well as difficulties in finding able judges (active or retired) who would be willing to serve on a temporary basis for uncertain periods of time. The Expert Group, without expressing a firm conclusion on this issue, recommends that it be given favourable consideration if it remains as the only practical solution for expediting completion of the missions of the Tribunals.

G. Enforcement of sentences

109. In the reports of the Advisory Committee on Administrative and Budgetary Questions referred to in paragraph 2 above, the Expert Group was asked, *inter alia*, to address the long-term question of enforcement of sentences. Article 27 of the ICTY Statute provides for the imprisonment of persons convicted by the Tribunal in a State which has indicated to the Security Council its willingness to accept convicted persons. Imprisonment is to be in accordance with the law of the State, subject to supervision by the Tribunal. Article 26 of the ICTR Statute is similar. Under it, sentences are to be served in Rwanda or in any of the States which have entered into an agreement with ICTR. Article 28 of the ICTY Statute and article 27 of the ICTR Statute provide that if, under the law of the State, the imprisoned person is eligible for pardon or commutation of sentence, the State is to notify the Tribunal. The President of the Tribunal (ICTY), in consultation with the judges, shall decide the matter on the basis of the interests of justice and general principles of law. In ICTR, "(t)here shall only be pardon or commutation ... if (the President) so decides" on the basis of the interests

of justice and general principles of law. Rules 123 to 125 of the ICTY Rules of Procedure and Evidence and rules 124 to 126 of those of ICTR elaborate on these provisions of the Statutes.

110. To date, seven States have agreed to accept convicted persons and encouraging discussions are in progress with additional States concerning this subject. Additional agreements are expected in the near future as many other States have been contacted. Indeed, the President of ICTY has discussed such agreements and witness relocation agreements on many occasions. Her Chef de Cabinet and the Registrars of both Tribunals have also been active in seeking such agreements. The terms of these agreements necessarily differ. Some States condition their acceptance on the existence of ties between the convict or his/her family and the receiving State. Other States, particularly those in Africa, would require financial assistance to enable them to bring their facilities for ICTR prisoners, up to international standards. One State, which is unable to receive ICTR prisoners would be willing to provide financial assistance for this purpose. At present, there is no immediate urgency about this since only one convicted person is serving a prison sentence. It is, foreseeable, however, that with the passage of time there will be additional convictions. A significant number of indictees are now in custody in The Hague and Arusha and are therefore potential convicts. In ICTY, additional indictees might become so if they are taken into custody. In ICTR, additional indictments are foreseen. This means that it would be advisable for arrangements to be concluded with as many additional States as would be required to accommodate the total number, including those named in sealed indictments, as well as the number likely to be indicted in the future, if that is known.

111. A model agreement is utilized by the Tribunals for prison arrangements with States. The agreement deals, *inter alia*, with early release as well as with pardon and commutation of sentences. Under it, the provisions of the Statutes referred to above are reflected in vesting ultimate control over these matters in the Tribunals. In some States, however, where national law may call for early release to which the Tribunals may not be agreeable, a satisfactory compromise has been developed. The prisoner will be returned to the Tribunal, which can then remit the prisoner to facilities in a State that has unconditionally agreed to the primacy of the Tribunals with respect to imprisonment. The Expert Group considers this to be a reasonable and practical solution.

112. As indicated above, the Statutes vest in the Tribunals, as independent judicial organs, supervision of imprisonment arrangements. The Expert Group understands this as confiding in the Tribunals authority to determine the scope and degree of their supervision. Occasionally, questions have arisen as to whether, and to what extent, the Tribunals' inspection authority can be discharged by others. These also have been resolved satisfactorily by agreements with the International Committee of the Red Cross. Again, the Expert Group considers such arrangements reasonable and practical. Based on past experience of the Tribunals, it appears to the Expert Group that similar solutions will be found for future questions which may arise regarding such matters since in the final analysis State cooperation is voluntary and the Tribunals are dependent upon it. All such arrangements will presumably be subject to such further conditions as the Security Council may decide upon with regard to prison terms not completed when the Tribunals' mandates terminate. A provision of the ICTR model agreement provides for appropriate advance notification to the Security Council with respect to such prison terms.

H. Office of the Prosecutor[32]

1. ICTY structure[33]

113. The prosecutorial organ of the Tribunal, with a total budgeted staff (not including general temporary assistance) at The Hague of 346 and an average vacancy rate of approximately 13 per cent, is organized into two major divisions, the Investigations Division and the Prosecution Division. Both are assisted by an Information and Evidence Section. The Expert Group was informed that the Office of the Prosecutor has generally experienced varying vacancy rates in its budgeted posts in each of its divisions and the section owing to normal turnover as well as the difficulty of attracting long-term candidates for positions that must necessarily be offered on only a short-term basis. In terms of total numbers, it is notable that, in comparison with national investigative and prosecutorial entities, whose missions are similar or even narrower in scope, the staff of ICTY, though far smaller, has nevertheless been able to achieve remarkable investigative and prosecutorial coverage in respect of a relatively large number of individual targets in a broad Balkan geographical area. The Prosecutor and the Deputy Prosecutor of ICTY have a small secretariat consisting of five Professional posts and four General Service positions. Although not part of the secretariat, a Senior Appeals Counsel reports to the Prosecutor. In addition, an ICTR support unit consisting of two Professional posts and two General Service positions serves to coordinate the Prosecutor's functions with respect to the Rwanda Tribunal. Three other Professional staff work on ICTR issues, but are not part of the secretariat.

(a) Investigations Division

114. The Investigations Division is headed by a Chief of Investigations, who is in charge of 10 teams of investigators, each under the supervision of a Commander. The Chief also has a Forensics Unit, a Military Analysis Team, a Leadership Research Team and a Fugitive Intelligence and Sensitive Services Unit. There are field offices in Sarajevo, Zagreb, Belgrade, Banja Luka and Skopje. The units, teams and field offices are under the Operations Commander, who is aided by an investigations tracking analyst. The entire Division is supported by 17 secretaries and 11 language assistants. Nominally, each investigations team is made up of a leader, eight investigators and a criminal intelligence analyst, but there is actually considerable flexibility in the way in which the teams are constituted and sized depending upon the nature and scope of the investigation and the targets. One of the teams nominally has two criminal analysts and only six investigators. The specialized teams and units consist of varying numbers of specialists, analysts, research officers, investigators and operations officers and have eight General Service posts. In total, 182 posts have been budgeted for the Investigations Division, but 23 posts are vacant.

(b) Prosecution Division

115. The Prosecution Division is led by the Chief of Prosecutions, who oversees a Trial Section consisting of eight Senior Trial Attorneys and eight Legal Officers (there is one vacancy) supported by eight trial support assistants and eight case managers, a Co-Counsel Unit consisting of 16 Trial Co-Counsel who assist the Senior Trial Attorneys, a Legal Advisory Section consisting of a Senior Legal Adviser, three Legal Advisers and five Legal

[32] Statements attributed to the Prosecutor in this report are those of Justice Louise Arbour unless otherwise indicated.

[33] Annex V to the present report contains organigrammes describing the structure of the Office of the Prosecutor.

Officers, a 14-member Team Legal Advisers Unit and a total of six secretaries. A trial team normally consists of a Senior Trial Attorney, two Co-Counsel one Legal Officer, a Trial Support Assistant and a Case Manager. Each is fully occupied with the various duties involved in the cases to which they are assigned.

116. The Legal Advisory Section functions primarily as a resource for the trial lawyers and team legal advisers and also now assists in handling a growing number of appeals with respect to the wide variety of legal issues that arise in the course of the work of the prosecution, including complex international law and comparative criminal law questions. The team legal advisers work closely with investigative teams and also provide support functions during trials mainly in respect of matters in which they were involved at the investigative stage. The Division has a total of 82 posts budgeted, of which 3 are vacant.

(c) Information and Evidence Section

117. The Information and Evidence Section is headed by a Coordinator, aided by an Administrative Assistant. The Section has an Evidence Unit, a Document Indexing Unit, an Information Support Unit and a Systems Development Unit. The Section has six (two are vacant) Professional posts and 61 General Service positions (5 are vacant). The work of the Evidence, Document Indexing and Computer System Development units is explained by their titles. The Information Support Unit handles the integration of computerized information as well as video analysis and cartographic work.

118. This Section is the arm of the Office of the Prosecutor that processes and stores documents and other information obtained by the prosecution from various sources. The latter include witness statements, government documents, military orders and items from many environments. Documents are processed by entering them in various databases. One of these, the Index Information Form (IIF), is a bibliographic database consisting of more than 1 million pages, contains a description of the nature of the document, how it was obtained and a brief summary of its contents. All documents held by the Office are electronically indexed in the IIF database. The documents in IIF come from investigation or prosecution teams. Typically, the person submitting the document will fill out the IIF form needed for entry of the document into the database, but this is sometimes done by Section personnel. Some of the documents are also entered into other, more sophisticated databases which permit different types of analysis. About half of the IIF documents are in Bosnian-Croatian-Serbian or other languages. Over 320,000 pages are awaiting translation, and over a million pages need to be analysed. The latter will doubtless result in still further work. In addition to the IIF documents, there are over 570,000 pages of other documents in the ICTY evidence collection which have yet to be entered into the IIF database. Of more than 221,000 pages of material obtained in the first half of 1999, about 21,000 have been translated. Many more, if not all, of the remainder will require translation. It is difficult to estimate how long it will take to complete all of the required document work.

119. On average, about 1190 pages can be entered into the IIF database per month per IIF staff member. Since there are nine staff in the Section, over two years would be needed to complete this work. However, since additional staff were added on a temporary basis to work on documents seized during 1999, this should expedite the work somewhat. In short, there is a large backlog which is slowly being dealt with. As noted elsewhere (see paras. 27 and 37), translation is a major bottleneck. The staff handling it, insufficient in number for the huge workload, is part of the Registry, although the Section has some IIF staff with language skills and language assistants who are able to summarize and briefly describe documents in several languages. This can help determine if a document is important enough to warrant

full translation. Whether to translate is decided by a trial or investigation team or by a specialized analyst.

2. ICTR structure

120. Much of the discussion in paragraphs 113 to 119 above is applicable also to ICTR. As is the case in ICTY, the Office of the Prosecutor in ICTR is organized in two main organizational units, the Prosecution Section and the Investigations Section, assisted by an Evidence and Information Support Unit. The total number of authorized positions in 1999 is 190; these resources are supplemented by a further 12 posts financed from extrabudgetary funds. A distinctive feature of the ICTR prosecution is its location; most of the staff is located in Kigali, separated from Arusha by some 760 kilometres and two hours by plane. At present, only one trial team, with nine staff members, is located in Arusha, together with a further four posts which are part of the Evidence and Information Support Unit. But the foreseen shift in ICTR in early 2000 from pre-trial to trial activity has caused the Prosecutor and her Deputy to direct the relocation to Arusha, early next year, of a large number of the staff of the Prosecution Section (trial attorneys and case managers) in order to deal with the expected number of trials. It should also be recalled that there are at The Hague four posts originally in the ICTR budget, but now funded by ICTY, which are intended to assist the Prosecutor in her functions with respect to ICTR.

121. As in the case of ICTY, but to a larger extent, the Office of the Prosecutor in ICTR has been plagued with a considerable number of vacancies. As of 31 August 1999, the vacancy rate was no less than 36 per cent. Offers of appointment have since been made to 46 applicants; if accepted, they would lower the vacancy rate to about 12 per cent. It is, however, fair to assume that not all such offers will be accepted. This rapid pace of recruitment underscores the need for training programmes to familiarize new appointees with ICTR techniques and the standards expected of them. The Expert Group recognizes the essentiality of the need for well-qualified lawyers in the Prosecution Section and encourages the continuation of training programmes currently being conducted for them.

122. The Investigations Section, with an establishment of 117 posts, in September 1999, comprised eight teams, supervised by three Commanders (two teams each) and by the Chief of the Investigations Section himself (also two teams). The responsibilities of these teams covered cases related respectively to the former government, their military, political parties, sexual assault, information media, as well as general analysis and tracking of suspects. Each team comprised, as of mid-September, between a minimum of five and a maximum of twelve staff members but, as in the case of ICTY, the Expert Group was advised that there was considerable flexibility in the composition of the teams.

123. The Prosecution Section is headed by a Chief, who directs a Trial Unit with 32 Professional and 4 General Service posts and a Legal Advisory Group headed by a P-5 and comprising, in turn, an Investigations Legal Advice Unit (nine Professional and two General Service posts) and a Prosecutions Legal Advice Unit (three Professional and two General Service posts). The Prosecution Section provides for a theoretical eight prosecutorial teams, each comprising a Senior Trial Attorney, a Co-Counsel and two other Legal Officer posts. In actual fact, at the time of the review by the Expert Group, the Prosecution Section was organized into six teams, with responsibility respectively for cases related to the military, Butare Province, media, Cyangugu Province, Kibuye Province and the Government.

3. Investigations Division/Section

(a) Functions

124. The overall task of the ICTY and ICTR investigations staff is to inquire into criminality in violation of their Tribunal's Statute. Proper investigation is critical to every successful prosecution. Cases are decided upon the evidence. The evidence is the product of diligent and painstaking collection of information and tangible objects relevant to proof of an offence, and of analysis and processing. Criminal prosecution can founder on the shoals of improper or slipshod investigation.

125. Allegations are brought to the attention of the Office of the Prosecutor and the investigations staff from numerous sources, including victims, witnesses, the media, NGOs, Governments and others. The number of complaints is so great and involves so many widespread geographic areas and individuals that it is physically impossible for the investigations staff to deal with all of them. Its policy in this regard has been one of candour in informing complainants of its limitations. A process of selection is inevitable. In 19 active and 17 currently planned ICTY investigations, with a possible increase in the number owing to the events in Kosovo, the Office of the Prosecutor has attempted to focus on the most egregious and pervasive violence against civilians by the various ethnic groups involved in the conflicts in the former Yugoslavia. In ICTR, the Prosecutor has successfully concentrated on the leadership figures allegedly involved in the 1994 massacres. It is the policy of the Prosecutor, which the Expert Group endorses, to conduct investigations only where she has a high level of confidence that enough evidence will be available to support an indictment.[34] Although the Office of the Prosecutor has been singularly even-handed in its investigations (see *Toward an International Criminal Court* (Council on Foreign Relations, 1999), pp. 56-57), ethnic groups which have more often been aggressors than victims obviously are targets of investigations more frequently than those that have usually been victims.

126. The goal of an investigations staff, once it has established that serious crimes have occurred (i.e. the crime base: what happened, how, when, where, why) is to develop the evidence needed for the indictment and successful prosecution of those responsible. In carrying out its duties, the investigations staff follows a rigorous process of mission planning to assure that its investigations will be conducted efficiently through examination, forensic and otherwise, of geographic areas, documents and other evidence together with interviews of victims, witnesses and others having relevant information. Depending upon the nature of the case, the investigation process can be lengthy and involve numerous distant areas and substantial travel within the former Yugoslavia and Rwanda as well as in other countries. Internal reviews are conducted by the Office of the Prosecutor every six months to assess the progress of each investigation and a presentation of each investigation is made to the Prosecutor. While national criminal investigations normally focus on a perpetrator, known or unknown, of a crime, ICTY and ICTR investigations focus on atrocities in geographic and functional areas. Thus until the full range of atrocities has been canvassed, ICTY and ICTR investigations continue.

127. The work of investigations staff does not end when the preparation of an indictment begins. It currently continues after indictment and during the trial process. After an indictment is confirmed, aspects of the investigation may have to continue because of new information, and this may lead to amendment of the indictment. A careful balance must then

[34] ICTY and ICTR investigations appear to have been more complex than those in the Nürnberg and Tokyo trials. Hostilities had ended in the latter cases and the victors were in full control of the terrain, the largely documentary evidence and the accused.

be sought between amending the indictment to take new evidence into account, with consequential delay of the proceeding, and the need for trial "without undue delay" as required by the Statutes. In some instances the prosecution may find a gap in its chain of evidence and further investigation may be called for to strengthen the case. In one recent ICTY prosecution, for example, military and leadership analysts were called upon post-indictment to provide additional support for elements of the case. During a trial, investigation team members, including their legal adviser, who serves in a co-counsel capacity, assist the prosecution team, sometimes as trial witnesses, in the presentation of the evidence previously assembled by the investigation team and also in additional investigative work precipitated by developments during the trial.

128. The investigations staff work is performed in court, at headquarters and in the field by specialized teams of criminal intelligence analysts, investigators, forensic specialists, military analysts and individuals doing leadership research. The latter group is composed of persons with skills from various disciplines, including historians. Prior to the culmination of the recent conflict in Kosovo which ended with the departure of military and police forces of the Federal Republic of Yugoslavia, the ICTY investigations staff was not given access to Kosovo by the Federal Republic of Yugoslavia and its efforts had been mostly in the other areas of the former Yugoslavia. Its work was related to events which had occurred beginning in the early 1990s and which extended until the Dayton Accords in 1995. After the military action of the North Atlantic Treaty Organization (NATO) provided the Investigations Division access to Kosovo, a substantial number of personnel were temporarily detached from ongoing investigations elsewhere and were sent to Kosovo. There they conducted investigations along with investigators and forensic experts from national jurisdictions.

129. When the investigative teams began functioning in 1994, they included a large number of gratis personnel contributed by Member States and others. They had before them the report, completed in late 1994, of the United Nations Commission of Experts which had been established in 1992, submissions from many NGOs and international organizations and information gathered by various governmental bodies and police forces from within the former Yugoslavia, Rwanda and other States. Although much of this information proved to be useful, a great deal of it was not, for various reasons such as anonymity or untraceability of sources. Often the nature of the information was such that it would be unusable in a court proceeding. For both Tribunals, developing an effective investigative organization in the unique circumstances of an ad hoc international criminal tribunal was essentially an evolutionary trial-and-error process complicated by the fact that, in the midst of it, the Office of the Prosecutor was required to discontinue the regular services of many knowledgeable and experienced gratis personnel. The General Assembly had concluded that the Office of the Prosecutor should be staffed by United Nations personnel appointed and remunerated in accordance with the rules and regulations of the Organization. Questions have been raised in ICTR as to whether recruitment standards for investigators have in fact been maintained. The Expert Group understands that this matter has been resolved internally. It recognizes the paramount importance of securing qualified personnel in the Investigations Section and recommends that this issue be carefully monitored on a continuing basis by the Deputy Prosecutor to ensure that applicable standards are adhered to.

(b) Impediments to effective functioning

130. Numerous factors which the investigations staff face in their missions account for the nature of their development and their difficulties over the past five years.

(i) Scope of missions

131. The scope of investigative missions involves:

(a) The number of distant locales to be visited;

(b) Their accessibility;

(c) The number of persons to be interviewed;

(d) The need for prior information to the government or, often, to obtain government permission for the mission;

(e) The time-consuming nature of that as well as for arranging the appointments themselves;

(f) The number of documents and other information (often in a language with which the investigators are unfamiliar) to be located and analysed;

(g) Arranging for the protection of investigators, and witnesses.

132. These factors cause the investigations work of the Tribunals to be unlike that of almost all other types of criminal investigative work. The organizational units involved had to develop a structure and procedures to deal with this.

133. The ICTY Investigations Division initially began with investigations of the events in civilian detention camps established by Bosnian Serbs to which public attention had been drawn. In Bosnia, there had been a takeover of certain regions by Bosnian Serb forces and those regions later evolved into the Republika Srpska. In 1994, it appeared to be the locale of the largest degree of systematic organized violence against civilians, largely Muslim and some Croat. Investigative work expanded to conflicts in Croatia between the Yugoslav People's Army and the Croatian Defence Forces in different areas. Other missions involved Croatian and Muslim responses. Initially, these groups cooperated with each other but later came into conflict. At the same time, various other conflicts were taking place in the region. Major investigative missions were also conducted regarding events in Sarajevo, Srebrenica and elsewhere. Some have involved over 40 municipalities and hundreds of witnesses and have extended over very lengthy periods. Table 1 indicates the magnitude of the tasks.

Table 1
Investigative work underlying selected ICTY indictments

Indictment	*Number of missions*	*Locations*	*Number of witnesses interviewed*
1. *Dragan Nicolić*	Numerous	4 countries	153
2. *Tadić and Borovnica*	Numerous	8 countries	217 identified by July 1994
5. *Slobodan Milošević and others*	Numerous	Ongoing – at least 5 so far	113
6. *Jelišić and Češić*	42	3	154 statements taken
7. *Karadžić and Miladić*	Extensive	Throughout Europe	264 selected to testify with a possibility of rising to 300
9. *Ivica Rajić*	Extensive	Throughout Bosnia	Over 100

Indictment	*Number of missions*	*Locations*	*Number of witnesses interviewed*
10. *Blaskić*	281 – in relation to Lasva River valley cases	Various parts of Bosnia, America and Europe	Over 1,196 reports from witnesses
15. *"Srebrenica" Karadžić and Mladic*	Numerous and ongoing	45 mass gravesites	Ongoing but 158 so far from a pool of 1,000 known potential witnesses
17. *"Celibici" (Delalic and 3 others)*	Numerous	10 countries	75-100
19. *Foca*	51	14 countries	216 witnesses and 14 expert witnesses
20. *Kovacević*	Numerous	Federal Republic of Yugoslavia and throughout the world	At least 217 by 1994. Increased thereafter
22. *Arkan*	Numerous	Federal Republic of Yugoslavia and rest of Europe	450; ongoing
26. *Kosovo, Slobodan Milošević and 4 others*		Field work mostly in Kosovo, Albania and the former Yugoslav Republic of Macedonia	360 so far; ongoing

134. Forensic work involving mass grave exhumations, for example, has been taking place for about four years. Some of the sites are related to crimes committed in the Prijedor detention camps and the evidence gathered will be utilized in several prosecutions. Other sites relate to crimes in the Srebrenica area. Most of this forensic work is expected to be completed in 1999 and 2000. In the latter year, at least four other sites will be examined, each relating to a separate investigation or prosecution.

135. Important evidence often had to be obtained by exhumations and forensic analysis. Nevertheless, exhumation sites did not become accessible until long after the crimes were committed. Exhumation and analysis thus became more difficult and the possibility of loss of the ability to use evidence due to fabrication, tampering or natural processes increased. Exhumations can only be carried out during certain periods of the year and cannot be hurried. Necessary forensic expertise has not always been available.

136. The work of the Division has led to one or more public indictments in each year beginning in 1994, an undisclosed number of sealed indictments, and may lead to further indictments.

137. In ICTR, investigations commenced with the analysis of documentation and interviewing of witnesses of some of the most egregious mass killings which took place during the spring and summer of 1994. Massacres had taken place over the entire territory of Rwanda, but had been especially concentrated in Butare, Cyangugu and Kibuye provinces as well as in the Kigali area itself. The first indictments (*Kibuye* cases) were submitted and confirmed in late 1995. Table 2 provides, for illustrative purposes, data on a number of investigations which over the past four years have led to indictments.

Table 2
Investigative work underlying selected ICTR indictments

Names of indictees	*Responsibility*	*Date of indictment*	*Number of missions*	*Locations*	*Number of witnesses interviewed*	*Status*
Kayishema, Clement	Préfet of Kibuye	6 May 1996	Numerous	Rwanda, Belgium, France, Switzerland	177	Sentenced to 25 years imprisonment. Has appealed.
Akayezu, Jean Paul	Bourgmestre in Taba commune, Gitarama	16 February 1996	Numerous	Rwanda, Zambia, Arusha	72	Sentenced to life imprisonment. Has appealed.
Bagosora, Theoneste	Director of Cabinet of Minister of Defence	10 August 1996	Numerous	Rwanda, Kenya, Europe, United States	254	
Musema, Alfred	Director of Tea Factory at Gisovu	24 July 1996	Numerous	Rwanda	64	Trial ended on 18 June 1999. Awaiting verdict.
Ngeze, Hassan	Journalist, Director of *Kangura* magazine	16 October 1996	Numerous	Rwanda, Kenya	60	
Nyiramasuhuko, Pauline	Minister of Family and Women's Affairs	29 May 1997	Numerous	Rwanda, Kenya	51	
Ruggiu, Georges	Journalist at RTLM	9 October 1997	Numerous	Rwanda, Kenya, Belgium	54	
Karemera, Edouard	Vice-President of MRND and Minister of Interior	29 August 1998	Numerous	Rwanda, Kenya, Togo	17	
Nzirorera, Joseph	Secretary-General of MRND party	29 August 1998	Numerous	Rwanda, Kenya, Benin	58	
Serushago, Omar	Interahamwe Chief in Gisenyi	29 September 1998	Numerous	Rwanda, Kenya, Côte d'Ivoire	46	Sentenced to 15 years imprisonment. Has appealed.
Bicamumpaka, Jerome	Minister for Foreign Affairs	13 May 1999	Numerous	Rwanda, Cameroon	14	
Mugenzi, Justin	Minister of Commerce	13 May 1999	Numerous	Rwanda, Kenya, Cameroon	17	
Mugiraneza, Prosper	Minister of Civil Service	13 May 1999	Numerous	Rwanda, Cameroon	5	

RTLM = Radio Télévision Libre des Mille Collines

MRND = Mouvement républicain pour la démocratie et le développement (formerly Mouvement révolutionnaire national pour le développement)

(ii) Number of personnel

138. The number of investigative personnel available for assignment has, naturally, been a limiting factor. Obviously, if the units involved had the resources of major European and other States that would customarily be deployed for comparable missions, their work could be done more rapidly.[35] However, given the number of investigators and analysts and the scope and unique complexities of their work, investigations are apt to be protracted. The Office of the Prosecutor has sought to overcome this by recruiting to fill vacancies as rapidly as possible. This is not always an easy task, however. Recruitment standards are necessarily high and at times compromises had to be made. The standards call for qualified, experienced criminal investigators and analysts who are willing to be employed under relatively short-term contracts, often in difficult field conditions, without assurance as to renewal or the length of renewal. This can be a significant problem for persons seeking career employment opportunities as well as for those already doing police work who need leaves of absence from their positions. Moreover, qualified specialists in the fields of forensic science and military analysis and those from disciplines required for leadership analysis work are not always readily available. In the case of ICTR, Kigali's remoteness, even as compared to other African cities, adds a further impediment.

(iii) United Nations rules

139. United Nations rules restricting the promotion of General Service staff to Professional posts and those relating to the retention period for interns have resulted in the loss of valuable staff members. Also, in some areas there is very limited opportunity for promotion from the P-2 to the P-3 level, resulting in the loss of experienced staff, including lawyers who serve, among other things, as Legal Officers on prosecution teams because they see little career opportunity.

(iv) Language

140. Language needs present major problems in virtually every aspect of investigative work. Investigators interviewing witnesses generally require the presence of an interpreter into and from Bosnian-Croatian-Serbian or Kinyarwanda. One of the biggest problem areas is the availability of qualified language staff for the translation of documents obtained from various sources, including seizures under warrants. Events in Kosovo have added to the problem because of the need to use a new language, Albanian. In both Tribunals, translation needs are far greater than translation capacity and it has been difficult to recruit qualified individuals. The result is that if, as happens to be the case in connection with one current ICTY proceeding, 75,000 documents in Bosnian-Croatian-Serbian must be translated and analysed to determine which are usable by the Prosecutor and which may have to be turned over to the defence, a lengthy period will be required. The difficulty in this area is illustrated by a recent experience in which funding was obtained for general temporary assistance in language and other staff areas. But of the language staff being sought, it was possible to find only a little over one third. In ICTR, the transcription and translation of approximately 500 tape recordings in Kinyarwanda related to the media cases has presented serious problems. Contractual translation has been sought to overcome these problems. Further details regarding language-related document problems are set forth in paragraph 119 above dealing with ICTY and in paragraph 37 referring to both.

[35] It has been suggested that, for example, the number of investigative personnel deployed at the sites in Nairobi and Dar es Salaam immediately after the embassy bombings was greater than the entire investigations staff of ICTY and ICTR. It has been announced by a United States Prosecutor that the trial of eight persons indicted in that case is expected to take six months.

(v) Problems with witnesses

141. The well-established and recognized civic duty in domestic legal systems of witnesses to a crime to give evidence cannot easily be invoked in the context in which investigations are carried out. Moreover, when witnesses are located, they are sometimes reluctant to testify for various understandable reasons. Concerns for personal security are very real in the light of possible reprisals against them or their families, particularly from perpetrators who remain at large. Indeed, the Expert Group understands that reports, as yet unverified by ICTR investigators, have been made of the death or disappearance, in suspicious circumstances, of possible future witnesses. This has to be recognized as an unfortunate effect of concentrating prosecutions on the leadership and the impracticability of prosecuting all lower-echelon perpetrators. Hence interviews must either be carried out secretly or witnesses must be removed to safer localities. Some victims of sexual assault cases may not wish to relive their trauma in legal proceedings and would rather close the incident than reopen wounds. And if victims were to form beliefs that convicted perpetrators were being punished lightly, this might also dissuade potential witnesses from subjecting themselves to the risks and inconvenience of testifying.

142. Dislike and distrust of the Tribunals by many victims, potential witnesses and others involved in investigations often make it difficult to overcome obstruction or to obtain cooperation and needed information. This demands patience, skill and resourcefulness by investigators.

(vi) State cooperation

143. Every national criminal justice system operates within an environment which provides it with the coercive authority of the State to ensure compliance, if necessary, by compulsion. The investigator has the power to search and seize documents, to compel persons, suspects, victims or potential witnesses to cooperate within prescribed limits and to arrest suspects. The investigator carries out his functions against the background of well-settled and familiar rules of criminal law, criminal procedure and evidence. There is usually not much difficulty in knowing what facts or objects are of legal relevance. Such a well-defined environment does not exist in relation to ICTY or ICTR.

144. The Tribunal Statutes contemplate, as mentioned above, unqualified cooperation by States in investigations as well as in other aspects of Tribunal functions. This has turned out to be an unrealistic expectation for ICTY in contrast to ICTR, where a high degree of State cooperation has been achieved. Access to crime sites in Bosnia and Herzegovina and Kosovo is no longer a major problem. But such is not the case with respect to other areas of the former Yugoslavia. Thus in Republika Srpska, all investigative missions are undertaken only with SFOR protection because perpetrators still control areas in which crimes were committed, and a similar situation may develop in Kosovo. Access to witnesses is not a major problem in most areas except in the Federal Republic of Yugoslavia, where there is no access at all. Access to documentary evidence remains a major problem since the parties to the conflict control all documents which might be of evidentiary value to ICTY. In Croatia, this has been a continuing problem. Other parties, also, are unwilling to part with important documents. In Bosnia, the use of search warrants has overcome the problem to some extent. But search warrants are of no avail in Croatia or the Federal Republic of Yugoslavia, where there is no NATO force to provide security for the execution of a warrant.

145. Problems also exist in both Tribunals with regard to obtaining documents not held by parties to the conflict, but where investigators must rely on State cooperation. And even where States are cooperative in providing confidential documents, they cannot be used in

evidence without the State's consent pursuant to rule 70 of the Rules of Procedure and Evidence.

146. Further problems exist in cases, particularly in ICTR, where witnesses or potential witnesses do not possess legal residence permits in their countries of residence and are therefore unable or unwilling to leave that country in order to testify and to return to it thereafter. ICTR has met this challenge either by persuading the authorities of the States concerned to issue special travel documents enabling such witnesses to travel to Arusha and subsequently to return to their domicile, or by itself issuing special travel certificates accepted by a number of countries in Africa.

147. Investigators have also been confronted with special problems in Croatia's refusal to recognize ICTY's jurisdiction over "Operation Storm", which involved a 1995 military operation to regain territory under the control of the Croatian Serbs and subsequent ethnic cleansing. And the same is true of the Federal Republic of Yugoslavia's refusal to acknowledge ICTY's jurisdiction over Kosovo. Both of these issues have been reported to the Security Council.

148. All of the foregoing either obstructed investigations or led to far lengthier investigations than would otherwise have been necessary.[36]

149. The Prosecutor has indicated that her publicly announced policy of focusing on leadership cases is likely to further worsen the difficulties in obtaining State cooperation, particularly in the ICTY region. Although few people outside the region are acquainted with the identities of politically or militarily important indictees who have recently come into ICTY's custody, people in the region are acquainted with them. And this has political implications for local political figures and Governments that tend to make them less cooperative in respect of the highest leadership figures. The latter are viewed by many, however mistakenly, as heroic rather than criminal figures warranting prosecution. Local politicians see cooperation with ICTY in such cases as political suicide.

150. At the same time that this outgrowth of the Prosecutor's policy makes it less likely that the top leadership figures will be taken into custody and prosecuted, it may imperil the Prosecutor's objective of trying to avoid protracted or repetitious trials of low-level figures, over whom custody could be obtained. As the Prosecutor put it, if she were able, for example, to try a relatively small number of top-level indictees in connection with Kosovo, it would be much simpler to conclude within a year or two that there was no need to prosecute figures of lesser importance. Instead, they could perhaps be left to national courts when the latter are able to function properly, and indeed this appears to have occurred recently with respect to three suspects detained in Kosovo.[37] If there is insufficient political resolve in the region and elsewhere to implement the mandate of the Security Council, the Prosecutor's policy of focusing on top leadership may, paradoxically, be self-defeating. The

[36] In the *Tadić* appeal, the Appeals Chamber indicated that "it could conceive of situations in which a fair trial is not possible because witnesses central to the defence case do not appear owing to the obstructionist efforts of a State". Under some circumstances, the Chamber envisioned that Tribunal rules might occasion a stay of trial proceedings, possibly entitling an accused to provisional release. Presumably the Appeals Chamber would be alert to situations in which the latter might be a motivation for non-cooperation.

[37] If and when national courts in the former Yugoslavia will be able to function effectively with respect to war crimes cases remains an open question. Since the Dayton Agreement, there has been an ongoing "rules of the road" project in which the Office of the Prosecutor, if assured adequate funding, is able to provide assistance in reviewing investigative files of national jurisdictions with respect to such cases and in making recommendations as to how they should be handled. So far, the Office of the Prosecutor has worked cooperatively with the Government of Bosnia and Herzegovina in this project.

recent arrest in Austria of a Bosnian Serb General, however, is an encouraging indication to the contrary.

(vii) Complexity of proof

151. Finally, investigative tasks are undoubtedly more complex than their closest analogues, organized crime investigations in large countries, because of: (a) the lapse of time (at least two years and often more in some areas) between the commission of crimes and the investigations, which poses special forensic and other evidence gathering problems; (b) the exacting nature of and different types of proof required, while the jurisprudence of the Tribunals was developing, to establish the complex details comprising the crimes proscribed by the Statutes; and (c) the difficulties associated with the numerous facets of military and political leadership analysis needed to achieve understanding and proof of relationships between levels of authority. For example, the relationship between ultimate responsibility and such things as the insignia on a uniform, the type of ordnance used in a conflict or written military orders and communications can be subtle and obscure when it is a question of identifying those culpable.

152. In ICTY, investigators were recently able to obtain access to Kosovo quite soon after crimes were committed and crime base investigative work there has been accelerated. The main task now is one of identifying the political entities, police, military groups, paramilitary groups, notorious offenders and persons in positions of authority who are most responsible. Earlier, in May 1999, an indictment was issued against the President[38] of the Federal Republic of Yugoslavia and others in connection with crimes allegedly committed in Kosovo that could be investigated without access to the crime scenes. The recent investigations on the ground have included work at those crime scenes and interviews of previously unavailable witnesses in addition to the 360 interviewed earlier. As a result, the scope of the May indictment may be expanded and others may be charged in future indictments.

153. In ICTR, the challenge is still to establish firm evidence of a connection between individuals and transactions which will lead to a more consistent and more efficient prosecution, in particular through joinders of related cases. This issue is further discussed in paragraphs 163 to 165 below.

(c) Optimum use of personnel

154. The Expert Group concludes that, having in mind the broad discretion of the Prosecutor with regard to the spectrum of potential indictees and the geographic areas she will examine, optimum use of investigative personnel is closely intertwined with prosecutorial policy and priorities, and must necessarily be so. From what has been observed by the Expert Group, the prosecution has generally made optimum use of investigative personnel in implementing prosecutorial policy. In ICTY, the average time lag between commencement of investigations and confirmation of indictments in the 25 cases of public indictments has been 12 months, an acceptable standard. The parallel figure in ICTR is 14 months. Moreover, the Expert Group has been informed of internal measures that should improve investigation work. Deadlines are set, largely adhered to, and if not, must be accounted for in regular periodic reviews. In ICTR, owing to a serious vacancy problem, a number of staff have only recently been recruited and it is too early to accurately gauge related performance. But training programmes for new staff have been helpful in the transition from the staffing of the Division with gratis personnel and should also aid in upgrading skills as necessary.

[38] Since 1994, he has been a long-term target of investigation for crimes allegedly committed in Croatia and Bosnia and Herzegovina.

155. It must be noted, however, that it is virtually impossible for outsiders unfamiliar with the intimate details of any given investigation to determine with precision whether and to what extent the investigation was conducted as speedily and in the most effective manner possible. Apart from this, the only other unresolved question, in the view of the Expert Group, lies in the number and the duration of post-indictment investigations. The prosecution's current stance is that when an indictment is submitted for confirmation the case is "trial ready".[39] That being so, unless cases are to be "over-tried", it would seem that the need for investigations following issuance of an indictment should be limited and should diminish.

156. It is nevertheless exceedingly difficult for a Prosecutor to refrain, even post-indictment, from pursuing a new lead that has the potential for either strengthening or perhaps exposing a weakness in her case. And from a practical standpoint, it is difficult to envision a prudent Prosecutor reducing investigative staff if this might result in trials being jeopardized because of the unavailability of investigators knowledgeable about the cases.

4. Prosecution Division/Section

(a) Functions

157. Prosecution functions under the wholly independent Prosecutor have been largely described above in the sections of the report dealing with the Chambers and the Investigations Division/Section. They are further elaborated below. Organizing the presentation of a case, preparation of prosecution witnesses and exhibits, preparing to meet the case of the defence, conducting the trial itself, brief writing, oral argument, etc., of course, vary from case to case in scope and difficulty and absorb prosecutorial resources accordingly. There is obviously a relationship between the size and the abilities of the prosecutorial staff and the number of cases that can be effectively managed by the Division at any given time. In this regard, the Expert Group notes that subsequent to its dispersal, following substantial completion of its work at The Hague, the Appeals Chamber issued a decision dated 3 November 1999 in case No. ICTR-97-19-AR72, *Barayagwiza*. That decision overturned an ICTR Trial Chamber decision denying a motion by the defence to "nullify the arrest and personal detention" of Mr. Barayagwiza and ordered dismissal with prejudice of the indictment against him. The Appeals Chamber decision was based not only on its disagreement with the Trial Chamber's views about the case, but also on Appeals Chamber findings of serious lapses on the part of the Office of the Prosecutor and, to some extent, the ICTR Registry as well, which caused undue delays in Mr. Barayagwiza's pre-trial indictment and post-indictment detention as well as in the notification to him of the charges against him. In consequence the Appeals Chamber held that his rights under the ICTR Statute as well as the ICTR Rules of Procedure and Evidence had been violated and that there had been an abuse of process and a failure of prosecutorial due diligence. Since the Expert Group had no opportunity to discuss this decision, either with the Office of the Prosecutor or with the ICTR Registry, it is unable to comment with respect to he matters involved beyond acknowledging the extremely serious nature of the Appeals Chamber's findings and criticisms as they bear on the effective functioning and operation of organs of ICTR.

[39] That was not the case during the 1995-1996 period and some delays undoubtedly resulted.

(b) Impediments to effective functioning

(i) Arrests

158. It is axiomatic that the Prosecutor is the gatekeeper for both Tribunals. The indictments brought before them for confirmation and subsequent trial are entirely within her discretion. Despite this, the Prosecutor does not truly control the timing or the number of cases that will actually be tried.[40] Just as the investigators are dependent on State cooperation in connection with their work, so the Prosecutor is dependent on State cooperation in obtaining the custody of indictees. Apart from being able to request the assistance of State or international military forces in arresting suspects or indictees and turning them over to the Tribunals for detention, the Prosecutor is powerless when it is a question of obtaining custody. In this connection, however, mention should be made of the repeated success of ICTR staff of both the Registry and the Office of the Prosecutor, with the cooperation of African States, in tracking, arresting and transporting (in a leased United Nations aircraft) indicted suspects over a wide geographical area. To be sure, the Statutes provide for notification of the Security Council when custody cannot be obtained, but thus far this avenue has not greatly improved the Prosecutor's position with regard to obtaining custody and prosecuting indictees (see also paras. 91-92 above).

(ii) Indictment problems

159. When an indictment has been confirmed and the indictee is in custody, the trial process begins. Before that, however, a substantial amount of work has been done by the prosecution staff in conjunction with the investigators in the preparation of the indictment. Indictments are the product of an intense collaborative process between investigators, trial attorneys, team legal advisers and the Legal Advisory Section. A draft indictment is prepared and the evidence is carefully reviewed. Determinations are made as to whether it is sufficient to establish guilt of the crimes to be charged beyond a reasonable doubt. If a consensus is reached in the indictment review, the indictment is finalized.

160. Prior to the filing of an indictment in court, it is reviewed by the Prosecutor and the Deputy Prosecutor for their concurrence both with respect to content and conformity with overall prosecutorial policy. When an indictment is submitted to the Chambers for confirmation, it is accompanied by supporting evidence sufficient to establish a prima facie case. Upon confirmation, the indictment is either made public in the case of indictees in custody or at large, or the indictment may be sealed in the case of indictees not in custody.

161. Indictment problems begin with the way in which offences are defined. While offences are broadly four in number in ICTY, and three in ICTR, they are defined in a way that makes them capable of being committed in numerous ways. No less than eight individual types of actions/conduct separately amount to a grave breach of the Geneva Conventions. In ICTR also, eight separate types of actions are considered serious violations of article 3 common to the Geneva Conventions of 1949 for the protection of war victims and of Additional Protocol II. The offence of violation of the laws or customs of war, which is specific to ICTY, is not fully defined; rather, five types of acts/conduct are indicated as non-exclusive examples. The rest are to be found in customary international law. Genocide, while perhaps more precisely defined in both Statutes, had, prior to the 1998 ICTR judgement in the *Akayesu* case, never been the subject of judicial determination by an international criminal tribunal, a factor adding to uncertainty in framing prior indictments. Crimes against

[40] As a consequence, comprehensive future planning with regard to work of the Office of the Prosecutor or the other Tribunal organs, particularly the Chambers, is difficult and tends in part to be more reactive to situations as they arise than affirmatively forward-looking.

humanity are partially defined with reference to "other inhumane acts" (article 5(i) of the ICTY Statute and article 3 of the ICTR Statute). This situation doubtless contributed to the prosecutorial tendency toward multi-count indictments. In *Tadić*, for example, the indictment contained 34 counts, *Delalić* was tried on 49 counts (of which 4 were subsequently withdrawn) and *Blaskić* on 20 counts.[41]

162. Some judges have indicated that multi-count indictments charging different crimes on essentially the same facts, and the amendment of indictments,[42] tend to complicate and prolong pre-trial and trial proceedings. And a judgement of a Rwanda Trial Chamber now on appeal which appears to differ from an earlier judgement of a different Rwanda Trial Chamber has held that in some circumstances conviction for more than one crime on the same facts is impermissible. In the prosecution's view, however, unless it charges crimes in that fashion, an accused may escape punishment because crimes that are later proven may not be deemed to have been covered by an indictment with fewer counts. As jurisprudence is developed in Appeals Chamber decisions, the perceived need for multiple-indictment counts will probably decrease, especially if counts are deemed to include "lesser" offences.

163. In ICTR, the grounds for the indictment of the accused, and especially the effect of these indictments on the joinder of cases, do not appear always to have been clearly defined in the early stages of the proceedings. This is probably attributable to a number of factors. In some cases, investigations were still ongoing at the time indictments were filed and new evidence kept cropping up, leading in turn to new grounds for indictment. Indeed, in more than half of the cases now in proceedings before ICTR, the provisional arrest of the suspect, under rule 40, took place *before* the indictment was submitted. No wonder, then, that in some cases the indictments had to be drawn up hastily and that considerable new evidence was later discovered. In respect of current (as of 30 September 1999) cases at the pre-trial stage, motions to amend and join indictments had been filed by the Prosecutor in 14 cases, and for joinder alone in a further 9. The Expert Group understands that amendments have been motivated by new evidence and by the obligation to address the full culpability of accused persons. As regards joinders, the Expert Group further understands that these stem from a change in prosecution policy based on evidence of conspiracy. However, such motions inevitably lengthen the procedure, since they are usually followed by a response of defence counsel leading to oral hearings or written briefs and to a further decision by Trial Chambers. In extreme cases, the resulting delays can be serious. Thus, interlocutory appeals on the procedural issue of the correct composition of a Trial Chamber to consider amended indictments resulted in a delay of almost nine months, not only in the cases in respect of which the appeal was filed, but also in eight others in which amended indictments had been submitted by the Prosecutor.

164. As regards joinder of cases, however, there is no doubt that a more solid body of judicial precedent will result, since the possibility of differing sentences on individuals involved in the same transaction will be lessened. Joinder will also reduce the number of times that the same witness will have to be called upon in related trials, and the resulting trauma and discomfort for the witness. Nevertheless, there is no guarantee that joinder will shorten the proceeding; it may actually lengthen it, since any adjournment requested and granted in respect of any one suspect in the case will result in the adjournment of the trial as a whole. The greater the number of suspects joined, the greater will be the danger of multiple adjournments.

[41] *Furundzija* was, however, tried on only two counts.

[42] The Expert Group is informed that, in ICTY amended indictments are primarily attributable to the sometimes lengthy gap in time between indictment and arrest during which new evidence is acquired which justifies amendment.

165. On the assumption, therefore, that there will be no change in the Prosecutor's policy to join indictments to the extent necessary and possible, the Expert Group trusts that maximum care will be taken to ensure that motions for amended indictments and for joinders are sought in a timely and complete manner so as to reduce the likelihood of procedural wrangle and delay.

(iii) Disclosure and other complexities

166. Confirmation of the indictment with respect to indictees in custody immediately triggers the heavy responsibility of the prosecution referred to previously (see para. 37), with regard to the search of its records and disclosure to the defence of exculpatory evidence and evidentiary material to the preparation of the defence. From that point on, the prosecution team is deeply involved in all aspects of the pre-trial and trial processes which, also for reasons discussed above, have tended to be protracted. The impediments to the effective functioning of the prosecution in speedily concluding trials and in conducting more trials stem largely from factors only partly within its control. Thus, not only do the details of each crime base, e.g., murder, rape, torture, have to be proved through witnesses and other evidence, but in the case of article 2 of the ICTY Statute, there must be proof of an international conflict and a link between the conflict and the crime as well as proof that the crime was committed against a member of a protected class of persons. With respect to other articles of both Statutes, the types of proof required differ, but as previously noted, generally present more difficult prosecutorial burdens than crimes in national jurisdictions. As Judge Cassese's Separate and Dissenting Opinion pointed out in the Appeals Chamber's judgement in *Erdemović*, the "philosophy behind all national criminal proceedings, whether they take a common law or civil law approach, is unique to those proceedings and stems from the fact that national courts operate in a context where the three fundamental functions (lawmaking, adjudication and law enforcement) are discharged by central organs partaking of the State's direct authority over individuals. That logic cannot be simply transposed onto the international level; there, a different logic imposed by the different position and role of courts must perforce inspire and govern international criminal proceedings" (para. 5, p. 8).

(iv) Witnesses

167. All witnesses have to be brought to Arusha or The Hague by the prosecution from distant places, sometimes from several States. Witness protection and confidentiality may require the use of measures such as anonymity and voice and image distortion. Evidence may have to be given by video link from a place away from the seat of the Tribunal. And prior to or after giving evidence, witnesses may have to be relocated. All of these factors affect the trial process.

(v) Language

168. As mentioned above, the length of trials is also attributable in part to the need for multi-language interpretation and English, French and Bosnian-Croatian-Serbian or Kinyarwanda document translation. Court interpreters work only two three-hour court sessions per day because of the intense requirements involved in simultaneous interpretation. The document translation backlog has been referred to above (see also paras. 118-119).

(vi) Motions

169. In regard to the motions with which the Trial Chamber had to contend during the early years of the Tribunals, jurisprudence had to be developed to deal with a number of important preliminary matters, such as protective measures for witnesses and the exclusion of evidence.

Motions were the only vehicle for doing so. They most probably could not have been adequately considered and resolved by the Trial Chambers without written presentations by the parties. Nevertheless, the ongoing need for the prosecution to deal with motions and other procedural measures of the defence requires utilization of prosecution resources that might otherwise be deployed.

(vii) Confidential information

170. Some impediments are difficult, if not impossible, for the prosecution to overcome. For example, the prosecution is often aided in its investigations by intelligence and other confidential information provided to it by organs of the United Nations or entities of national Governments, military as well as civil. If the prosecution seeks to use such information as evidence in a trial, the prosecution is required, under rule 70 of the Rules of Procedure and Evidence for both Tribunals, first to obtain the consent of the provider of the information, and this may be impossible to do where sensitive sources or means of acquisition are involved. If providers of such information were not assured of confidentiality in such cases, they would withhold the information altogether. A related time-consuming issue involves the applicability of the immunities of United Nations officials from being called as witnesses by the prosecution. The question is whether a waiver of the immunities by the Secretary-General is a prerequisite. The Office of the Prosecutor and the United Nations Office of Legal Affairs hold differing views in the matter. Nevertheless, in all cases thus far, requested waivers have been issued.

5. Views of the Prosecutor regarding impediments and future work

171. With regard to the length of trials, the Prosecutor noted that the true measure of the duration of a trial was not the time period over which the trial extended, but rather the actual number of days of trial, excluding periods when courtrooms or judges were unavailable for various reasons and excluding trial suspensions owing to interlocutory appeals, the need to deal with motions, illness or unavailability of attorneys or other necessary parties, etc. She added that, by comparison with comparable complex civil or criminal litigation in national courts, there were not likely to be dramatic differences between the actual length of trials before the Tribunal and those in national courts.

172. That said, however, the Prosecutor acknowledged that it was essential for the parties and the Chambers to strive to expedite trials and for prosecutorial policy to be aimed at this goal. She pointed out that when she arrived in 1996, 74 individuals had been indicted in ICTY and 18 in ICTR. Since then, only 21 public indictments have been issued (7 in ICTY and 14 in ICTR) and an undisclosed additional number are under seal. She opposes indicting more than a single individual in one case unless each co-accused is sufficiently important to be worth trying alone. In ICTR, however, an effort is made to join cases which are prima facie related in terms of the transaction or individuals concerned (see paras. 163-165 above). In the "*Omarska*" case before ICTY, 19 individuals were accused in a single indictment. Their trial would have been efficient if all 19 could have been tried together. In fact, however, it turned out that the accused could not be taken into custody at the same time. Hence, it was necessary to try basically the same case in four separate trials, only two of which have been completed.

173. The Prosecutor and the ICTY and ICTR Deputy Prosecutors have informed the Expert Group that, in their view, the Office of the Prosecutor has reached maturity. This is not to say that the evolutionary progress of the Office has come to an end or that there is no room for improvement in organization and management to achieve more effective functioning and operation. They are, however, satisfied that no significant increases in personnel should

be needed in the future, assuming no sudden future conflagrations like Kosovo. After their years of activity in the former Yugoslavia and Rwanda, they are convinced that they are sufficiently acquainted with all of the crime scenes so as to be able to determine which prosecutions would be viable and that they are aware of the identity of virtually all potential prosecution targets. They believe that these can be dealt with in the next 10 years and that they are currently adequately staffed to accomplish this.

I. The Registry[43]

1. Structure

174. In both Tribunals, the Registry has a triple function. First, it directly assists Chambers in their judicial work. Secondly, it performs a number of court-related functions which, in national practice, are usually entrusted to entirely separate governmental departments. Thirdly, it provides general administrative services.

175. Direct judicial assistance to Chambers comprises the preparation of the judicial calendar; the maintenance and scheduling of courtrooms; the recording, minuting, maintaining and registering of transcripts, motions, orders, decisions, judgements and sentences; and the provision of direct research and drafting assistance by way of legal assistants or clerks. In the special environment of both Tribunals, judicial assistance also includes ensuring translation and interpretation services, as may be required, into and from at least two, and sometimes three, languages in each Tribunal.

176. Court-related functions performed by the Registry as an exception to general national practice are the provision and maintenance of detention facilities; the development and maintenance of a list of defence counsel for assignment to indigent suspects or accused; the assignment of counsel to such suspects or accused; the establishment and maintenance of a system to remunerate counsel; and the remuneration itself of counsel in accordance with the approved fee structure. Court-related functions further include assistance to prosecution and defence witnesses testifying before either of the Tribunals.

177. Finally, as the administrative arm of the Tribunal, the Registry has been entrusted by the Secretary-General, under delegation of authority by him, with traditional United Nations administrative functions comprising personnel, budget, finance, procurement, space management, security, and — in ICTR — local transportation as well as maintenance of the Arusha/Kigali air link. In both Tribunals, the Registry also provides public information and library services.

178. In both Tribunals, this diversity of functions has been reflected in the organizational structure. Thus, direct court support, and also the court-related functions spelled out in paragraphs 174 to 176 above, are with one exception performed by a Judicial Support Services Division, whereas the traditional administrative functions are performed by an Administrative Services Division. Registry also includes a Security and Safety Section and a Public Information Unit. The one exception to this alignment is the Languages Section (i.e., interpretation and translation), which in both Tribunals is placed under Administrative Services. This somewhat anomalous location (in comparison with placing it under direct court support) probably reflects customary United Nations organizational practice.

[43] Annex VI to the present report contains organigrammes which describe the structure of the ICTY and ICTR Registries.

179. Because of the extensive nature of their functions, the Registries in both Tribunals account for the larger part of the related resources. Thus in ICTY the 1999 budget of the Registry represented 68 per cent of the total resources of the Tribunal. In ICTR, the comparable figure is 74 per cent. This may give rise to the impression that budgetary priorities are askew, since significantly greater resources are provided to administration than to programmes. This view, however, is not supported by the evidence, as is demonstrated by the table below. First, the judicially related activities within the Registry, which most certainly are programme activities, account for a significant part of the budget, some 31 per cent of the 1999 ICTY budget and over 24 per cent of the 1999 ICTR budget. Secondly, the critically necessary languages establishment accounts for a further 10 per cent of the budget in both Tribunals. Typical United Nations administrative services thus represent, in the final analysis, approximately 27 per cent of the ICTY budget and 40 per cent of the ICTR budget. The percentage difference between ICTY and ICTR in respect of traditional administrative costs appears to arise from the need of the Rwanda Tribunal to maintain two major locations in two countries. This unavoidably results in some duplication of administrative services as well as costs from the further requirement, in terms of security and the absence of reliable local transportation facilities, to maintain a considerable fleet of vehicles in Arusha and Kigali, and a dedicated air link between the two locations.

1999 budgetary appropriations (percentage)		*ICTY*	*ICTR*
Chambers		2.8	1.9
Prosecution		28.5	23.8
Registry		68.7	74.0
of which, direct	Judicial Support	(31.3)	(24.4)
	Language Section	(10.5)	(9.9)
	Administrative costs	(26.9)	(39.7)

180. The total budgeted and extrabudgetary staff of the Registries comprise 448 posts in ICTY and 432 posts in ICTR.

2. Functions

(a) Judicial Support Services Division

(i) Chambers Legal Support

181. This Section is made up mainly of the Legal Assistants who aid the judges with analyses of submissions by the parties, legal research, drafting and miscellaneous matters related to the work of the Chambers. Legal Assistants work very closely with the judges. Their work is, of course, confidential. Accuracy, analytical ability, thoroughness and clarity are essential measures of performance. Ideally, Legal Assistants should be fluent in English and French.

(ii) Court Management

182. In both Tribunals, Court Management is the basic judicial arm of the Chambers. Its functions comprise the scheduling of proceedings on behalf of Chambers (requiring close contact with the parties to ensure their availability), the management of courtrooms, the registering and custody of briefs, motions, orders, decisions, judgements and sentences,

making arrangements for, and maintaining, transcripts and minutes, arranging and setting priorities for interpretation and translation, and maintaining case files. In short, Court Management is the nerve centre of the court process. Of special importance is the need to provide to all concerned — especially Chambers, but also prosecution and defence counsel — an exact and updated picture of the stage of proceedings at any given time. It is also necessary to track at any time the exact status and location of motions, briefs and judicial orders and decisions.

183. In order to fulfil these responsibilities, the Court Management function must be adequately staffed and must possess and maintain databases available to all concerned. While no problems in this regard were encountered by ICTY, the situation in ICTR was not entirely satisfactory. Despite goodwill and lengthy working hours, up-to-date tables showing the status of each case were not readily available. As a result, parallel status charts were being developed in the President's office, and also in the Office of the Prosecutor. It was readily recognized by all concerned that improvement was necessary in this respect. (See the fourth annual report of ICTR, A/54/315-S/1999/943, para. 69). Prompt availability of judicial documentation was also a problem, but the Expert Group noted that a new software program had recently been purchased by the Tribunal and is currently operational. It will allow scanning, storage and instant availability of the Tribunal's documentation to Chambers, the Office of the Prosecutor and counsel in Arusha, Kigali and The Hague, thereby also reducing the need for costly and time-consuming photocopying and more expensive fax and pouch transmittals. The Expert Group understands that plans are in progress at ICTR to extend to ICTY the capacity to use this software program to enhance cooperation between the two Tribunals. After unduly long delays, outside consultants are being recruited by the Registry to train ICTR staff in the use of audio-visual equipment installed in two of the three courtrooms.

184. Scheduling of proceedings has presented, and still presents, special problems in ICTR, in significant part because of unavailability of counsel to appear at the time required by the court. The Expert Group is fully aware of the busy schedule of counsel, many of whom are based far from Arusha: in Canada, the United States, Europe and in African countries just as remote in terms of airline schedules. Nevertheless, bearing in mind that all counsel in ICTR are assigned — that is, paid by the Tribunal — the Group is of the opinion that defence lawyers, having agreed to be placed on the list of assigned counsel and having thereafter accepted a specific assignment, are under a duty to the Court to comply as far as possible with reasonable scheduling required for the expeditious conduct of proceedings. Indeed, this requirement has been, since June 1999, included in the ICTR Rules, which provide (rule 45 *ter*) that "Counsel or co-counsel, whether assigned by the Registrar or appointed by the client for the purposes of proceedings before the Tribunal, shall furnish the Registrar, upon date of such assignment or appointment, a written undertaking that he will appear before the Tribunal within a reasonable time as specified by the Registrar." The Expert Group notes that when a series of motions was scheduled for hearings in August 1999 the President of the Trial Chamber asked that counsel appear on the scheduled day and stated that, if unavailable, the accused would be represented by co-counsel; and if co-counsel was also unavailable, the President would arrange for a duty counsel to represent the accused. Not surprisingly, all counsel (or co-counsel) appeared on schedule. The ICTY Rules do not provide for the appointment of a duty counsel during interim periods when the accused might otherwise be unrepresented. The Expert Group recommends that ICTY consider the adoption of a rule similar to ICTR rule 44 *bis*.

185. At the time of the review by the Expert Group, two staff members had been assigned from other areas of the Registry to the Court Management Unit to track, verify and expedite appeals documentation, in coordination with staff assigned for the same purpose at The

Hague. The Expert Group strongly supports this move, since it is essential that continuous contact be maintained in appeals cases between the Trial Chambers and the Office of the Prosecutor in Arusha and the Appeals Chamber in The Hague. This assignment of staff to follow up appeals should assist considerably in reducing avoidable delays in the appeals process.

(iii) Victims and Witnesses

186. A Victims and Witnesses Section has been established under rule 34 of the Rules of Procedure and Evidence of both Tribunals to give effect to the relevant provisions of the Statutes[44] and "recommend protective measures for victims and witnesses ... and provide counselling and support for them, in particular in cases of rape and sexual assault". In ICTR, rule 34 explicitly mentions, as a further objective, that of developing plans to protect witnesses who have testified before the Tribunal and who fear a threat to their life, property or family.

187. These sections are misnamed by the Statutes to the extent that their title implies responsibilities with respect to victims other than witnesses. In fact, the work of the sections involves only potential or actual witnesses (whether or not victims) for proceedings in both Tribunals. The sections are responsible for the transportation of witnesses to and from Arusha or The Hague, assisting them with family and work-related problems, such as child care, loss of earnings or need for farm help, connected with their responsibilities as witnesses, their care and housing at Arusha or The Hague, their security before, during and after their appearance at the seat of the Tribunal, and for assisting them in coping with the often traumatic emotional and psychological problems arising out of their situation. Particular attention is directed to meeting the needs of female witnesses (often victims) of gender-related crimes. The nature of the work of this Section is, in the degree of its sensitivity, unlike that of comparable bodies in national jurisdictions and is broader since its witness transportation and protection activities are frequently international in scope. The special problems of ICTR in this regard are referred to in paragraph 146 above.

188. The main objective of the sections in arranging for the appearance of witnesses for the Prosecutor, the Defence and the court entails major logistical problems. Witnesses have come from as many as 30 different countries in the case of ICTY, and about 15 in ICTR, and thus a considerable amount of work is required in connection with planning, ticketing, housing and obtaining visas and other official papers, as discussed in paragraph 146 above, to ensure that they cannot only come to the seat of the Tribunals, but also return to their homes.

189. The work of the Section usually begins when witness lists are submitted to the Trial Chamber, but it may begin even earlier if, as sometimes occurs, the Prosecutor or defence counsel have special needs with respect to potential witnesses. Security arrangements for witnesses are a prime concern of the Section not only en route to and from as well as while at the seats of the Tribunals, but in some cases involving witness relocation for lengthy periods afterwards. Witness relocations to other countries involve a series of additional issues, including agreements with the countries involved and how the expense involved is to be borne. No such agreements have yet been formalized by ICTR, although negotiations are in progress. At times, the Office of the Prosecutor performs similar functions, particularly in witness security arrangements during investigations, although it does not have any dedicated resources to perform these functions.

[44] Articles 15, 20 and 22 of the ICTY Statute; articles 14, 19 and 21 of the ICTR Statute.

190. Both sections, like other parts of the Registry, adhere to a position of impartiality with regard to all witnesses. They avoid, to the extent possible, knowledge about or involvement in what witnesses' testimony will cover. They do their best on a 24-hour-a-day basis to provide for the material and emotional needs of witnesses in their charge, including, as required, transportation, security and safe houses. Communications with witnesses are not revealed to the Prosecution or to defence counsel. In ICTY, the Section has had problems controlling the conduct of witnesses being housed in The Hague and in managing different ethnic groups at The Hague at the same time. And as noted above, a wholly separate series of sensitive psychological issues must be dealt with by both sections in caring for witnesses in cases involving sexual assault.

191. It is not easy for the sections to control their witness expenditures as fully as would be desirable. This stems primarily from the lack of certainty as to exactly when a witness will be testifying, how long the testimony will last, whether trials will be interrupted or rescheduled and whether a last-minute change in willingness by a witness to testify or in what the witness was expected to testify to, will, as has happened, occur. In addition, either the prosecution or the defence may overestimate the number of witnesses needed at a given time and repeat trips may be required. The Expert Group believes that the Registrar should be consulted regarding witness arrangements whenever trial adjournments or schedule changes are under consideration. Similarly, the Group recommends that, when the summoning of court witnesses under rule 98 of both Tribunals is under consideration, the Registrar should receive as much advance notice as possible to make the sorts of contact arrangements at Arusha or The Hague that would ordinarily be made by a Prosecutor or defence attorney for their witnesses.

192. Among the security arrangements for the protection of witnesses are closed court sessions, voice and image distortion, non-public disclosure of witness identities and testimony by deposition by video link from remote locations. At the request of a State, the Expert Group inquired into the feasibility, in ICTY, of reducing costs and emotional or other burdens on witnesses by greater use of testimony from locales other than The Hague. It appears that no meaningful cost savings, if any, could be derived from increased use of video-link testimony. In addition, the technical quality of the images and/or sound appears to be unreliable. From its discussions with the Office of the Prosecutor, the Expert Group understands that deposition testimony at distant locales would probably involve greater costs and no fewer burdens on witnesses than testimony at The Hague.

(iv) Detention Unit

193. Detention facilities exist both in Arusha and in The Hague. Both Detention Units are highly secure, modern, well-designed facilities. The ICTY Unit has a capacity for holding 36 detainees, each in an individual cell. ICTR facilities can house 54 detainees, each also in an individual cell; there are four different wings, thus allowing for separate facilities for female prisoners, and for segregation from other prisoners if required or desired. Cells, although secure, are not barred and each has its own toilet, lavatory and shower facility. The Units have recreation, including television, reading and exercise facilities, and arrangements for medical care. They also have accommodations for visits by counsel to detainees and for other visitors including, in ICTY (and shortly in ICTR), family visits, though the Expert Group has been informed that ICTR anticipates that some family members of detainees are likely to find it financially difficult to travel to Arusha from their domiciles.

The Rules of the Detention Units[45] accord with the principles and philosophy of the Standard Minimum Rules for the Treatment of Prisoners,[46] which were subsequently extended to persons on remand.[47] Kitchen facilities are generously appointed and menus are prepared for special dietary requirements, if prescribed by the Medical Officer.

194. The operating cost of the ICTY Detention Unit at current staffing levels was reported to the Expert Group as 375 Netherlands guilders per day per cell (approximately US$ 178). Comparable figures in ICTR were reported at $117 per day in 1998, and at $98 per day thus far in 1999.

195. Commanders of both Detention Units, who are experienced in prison administration, appear to display balanced sensitivity both to the rights of detainees and to their responsibilities with respect to observance of the rules of the Unit. This appears largely to account for the relatively calm history of the Detention Units. Based on the Expert Group's visit to both Units, it appears that detainees are considerately treated and that their environment is hospitable. The International Committee of the Red Cross (ICRC) has had regular access to the detainees and reports to each Tribunal on its visits. The Expert Group has been informed that ICRC has found the facilities to be in compliance with its requirements.

196. While no significant discipline problems appear to have arisen in the Arusha Detention Unit, the Detention Unit at The Hague has occasionally experienced relatively minor disciplinary problems with detainees. It appears to have dealt effectively with them within the framework of the Detention Rules. The most significant issues concerned receipt of prohibited items from visitors. The Unit has also had to deal with difficulties created by defence counsel.[48] These are reported to have included the abuse of Security Officers when defence counsel have had to be reminded of their obligation to observe Detention Unit Rules; attempts by defence counsel to bring forbidden items into the Detention Unit; attempts by defence counsel to communicate with detainees other than their assigned client while in the Unit; soliciting representation of newly arrested detainees by contacting them and pressuring their family members. In addition, there has reportedly been some abuse of consular privileges under detention rule 65, which permits communications between detainees and consular officials with regard to matters within the proper scope of consular representation.

197. It seems clear to the Expert Group that the integrity of both the Tribunal and defence counsel are called into question when Detention Unit rules are not observed by defence counsel. The same is true, of course, with respect to the Office of the Prosecutor. There is no essential difference between serious misconduct under those rules and other forms of contempt of the Tribunal. Hence, the Expert Group recommends that the Commander of the Detention Unit report promptly to the President and the Registrar incidents of such misconduct. They should be promptly investigated by the Registrar and, as appropriate, be referred to the Tribunal or be dealt with directly by the Registrar. Where misconduct is

[45] In both Tribunals: "Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal".

[46] *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[47] Economic and Social Council resolution 2076 (LXII) of 13 May 1977.

[48] The Expert Group was also informed of instances of abuse of ICTY Registry personnel by defence counsel. We recommend that such matters be dealt with firmly by the Registry, within the framework of its Directive on the Assignment of Counsel with the assistance of the Trial Chamber. The Advisory Panel should also be consulted. See para. 216 below.

found, it is doubtless within the Presidents' authority, under rule 46 of both Tribunals, to report the matter to the appropriate national authority and to remove the defence counsel from the list of approved defence counsel.

198. The Detention Units, being within the organizational structure of the Registry, understandably view themselves as impartial custodians of detainees. As such, they take the position that they are not a police law-enforcement instrumentality, but part of a judicial support structure (see decision of the President, case No. IT-96-21-T, dated 11 November 1996). Pursuant to detention rule 5 of both Tribunals, the presumption of innocence of detainees is a major guiding principle of the Detention Units in their relationship with the Office of the Prosecutor.

199. As a result, there has been minor tension between the ICTY Detention Unit and the Office of the Prosecutor under rule 66 of the ICTY Detention Rules. The latter provides for requests by the Prosecutor to the Detention Unit for certain types of cooperative assistance when the Prosecutor has reason to believe that conduct by one or more detainees could prejudice or affect ICTY proceedings or investigations. When the Prosecutor has sought the assistance of the Detention Unit with respect to electronic interception of such conduct, which the Prosecutor had reason to believe was authorized by rule 66, the Detention Unit and the Registry were reluctant to cooperate.

200. In the view of the Expert Group, the presumption of innocence in judicial proceedings does not conflict with the legitimate interests of law-enforcement authorities as they affect detainees. This point appears to have been embodied in the language of rule 66 of the ICTY Detention Rules (rule 64 of the ICTR Detention Rules). The Expert Group concludes that once the Prosecutor shows reasonable grounds for cooperative assistance by the Detention Unit under this rule, such assistance should be forthcoming from the Registrar without delay in accordance with the decision of the President referred to in paragraph 198 above, or the matter should immediately be referred either to the President or to the Trial Chamber as provided in that decision. Communications between detainees or between detainees and outsiders, other than their counsel, are not privileged. Once sufficient grounds for detention exist, the presumption of innocence, while fully applicable in court proceedings, does not insulate detainees from investigation of potentially unlawful conduct while they are in detention. Nor does it provide detainees with any expectation that unprivileged communications will not be intercepted. Accordingly, in matters arising under rule 66 of the ICTY Detention Rules, or rule 64 of the ICTR Detention Rules, it appears to the Expert Group that the focus of the Detention Unit and the Registry should be on the legitimate law-enforcement requirements of the Prosecutor rather than on the presumption of innocence which can safely be confided to the protection of the court should the Prosecutor stray beyond proper bounds.

201. The Commander of the ICTY Detention Unit has invited the attention of the Expert Group to an additional issue: the need, apparently for speedier procedures under rule 65, for short-term provisional release of detainees. The Expert Group concurs in the Commander's view that such procedures could be studied to provide for emergencies such as funeral arrangements or the terminal illness of a close relative under conditions of adequate guarantees from the detainee's country governing removal and return to detention. The Expert Group understands that, in two cases, such arrangements have been made.

(v) Provision of defence counsel

202. Provision of counsel to the accused is a fundamental feature of the judicial process in both Tribunals. Organizational structures have been established, in ICTY as in ICTR, to implement the legal aid system and serve as the focal point for all matters concerning

defence counsel arrangements under the supervision of the President. The work of the Units involves assisting the Registrar in developing and maintaining a list of counsel available for assignment and in developing and monitoring the Registry's detailed requirements regarding the professional duties and responsibilities of assigned defence counsel, their qualifications and their remuneration. The respective units are also involved in determining whether an accused or a suspect is, by reason of indigency, entitled to assignment of defence counsel by the Registry. When, as has frequently occurred, assigned counsel have sought to resign their assignment or an accused has sought their replacement, the Defence Counsel Unit provides advice and assistance to the Registrar in deciding on these requests. The Units also assist the respective Registrars in connection with the activities of the Advisory Panel which the Registrars in each Tribunal consult, from time to time, regarding matters relating to the assignment of counsel and in connection with the activities of associations of defence counsel.

203. The 1999 budget of the ICTY Defence Counsel Unit in respect of payments to assigned counsel is $14,000,000, approximately 15 per cent of the entire ICTY budget. ICTR estimates for 2000 for this purpose amount to $10,195,000, or almost 10 per cent of the total expenditure estimates. There are currently some 150 defence personnel receiving assistance from the Tribunals. A number of issues related to defence counsel, therefore, have a significant bearing on the effective functioning and allocation of resources of the Tribunals. This is all the more so since, in ICTR, all suspects have up to now required assigned counsel, while the experience of the International Tribunal for the Former Yugoslavia has been that about 90 per cent of suspects and accused require assigned counsel.

a. Amounts of payments

204. As noted above, a combination of factors — the right of an accused or a suspect to counsel, the hybrid common/civil law character of the Rules of Procedure and Evidence of both Tribunals, the adversarial system of trials, language differences between counsel and accused and the complex international law features of crimes proscribed by the Statutes of both Tribunals — result in multiple counsel representing suspects and indictees, and in their need for investigative and other assistance. Indictees from the former Yugoslavia may be apt to select counsel who speak their language but who, in some cases, are not entirely familiar with the common law adversarial system of criminal trials or international criminal law. Indictees in ICTR generally look for French-speaking counsel. Those of two nationalities — Cameroon and Canada (Province of Quebec) — are frequently familiar with both the common law and the civil law tradition. In general, co-counsel are appointed in virtually all cases and frequent use is made of expert consultants.

205. On average in ICTY, a defence team at the pre-trial stage costs the Registry from $22,000 to $25,000 per month, and during trial the monthly cost increases to about $45,000. In ICTR, payments per case made in 1998 and the first nine months of 1999 varied from a low of $5,822 to a high of $483,391. Significantly, both figures relate to proceedings at the pre-trial stage. Since payments are made primarily on the basis of hourly rates, there is little financial incentive for assigned counsel to expedite proceedings.

206. The Registries consider that there can be no variations between different national groups in the hourly rates payable to lawyers even though a windfall may thus result for some. Although this is plainly consistent with United Nations principles governing Professional staff remuneration, it is not necessarily the case with respect to differently situated independent contractors, which is what the assigned lawyers are. As things now stand, there is dissatisfaction on the part of some assigned counsel who believe that hourly rates are too low, particularly for co-counsel. Because of the budgetary implications referred

to in paragraph 203 above and the key role of assigned counsel in the statutory scheme of both Tribunals, the issue of whether remuneration levels are too high or too low deserves careful attention to assure that amounts paid are fair and reasonable.

207. A lump-sum system of payment, agreed upon at the outset, based on the assumed difficulty of the case is, as it should be, under consideration by the ICTY Registry. In case of disagreement, the system would include an arbitration feature under which the amount would be decided by a commission made up of lawyers and academics. Another alternative under consideration by the Registry is a decreasing scale of payments in which different stages of a case would be paid for at different and decreasing hourly rates. The assumption is that different levels of importance and difficulty could be assigned to different stages of a case. The Expert Group is doubtful that this would be feasible, not only because of likely opposition from assigned counsel, but also because of the individuality of cases. What may be a most difficult and critically important stage of one case may be the opposite in another. Despite this, all possible alternatives should be considered.

208. The Expert Group understands that the ICTY Registry is currently consulting with its Advisory Panel with respect to the payment questions noted above and trusts that the conclusions reached will be satisfactory to all parties.

b. Qualifications

209. Rules 44 and 45 of the Rules of both Tribunals establish two prerequisites for eligibility to be assigned as counsel for an indigent suspect or indictee: (a) admission to the practice of law in a State, or being a University Professor of Law; and (b) speaking one of the two working languages of the Tribunal. In ICTY, but not in ICTR, the latter requirement may be waived upon request by a suspect or accused for assignment of a counsel who speaks the language of the suspect or accused. In ICTR, rule 45 establishes the additional requirement of having at least 10 years of relevant experience.

210. The Expert Group considers these prerequisites inadequate. In both ICTY and ICTR, mere admission to the practice of the law is no assurance that an attorney is qualified with respect to trial or appellate work or criminal law, much less international criminal law. Similarly, a University Law professorship does not automatically carry with it knowledge or experience with respect to matters germane to criminal trials or appeals. The extent to which inadequate qualifications have had a negative impact upon operations in both Tribunals is difficult to quantify, but it seems certain that they have. Both judges and defence counsel have expressed misgivings regarding the qualifications of some assigned counsel who have represented accused. In some instances in which accused have sought replacement of assigned counsel, assertions have been made questioning their competence. It appears to the Expert Group that the ICTY standards for experience should be brought more in line with those of ICTR, and in both cases elevated to require at least five years of criminal trial experience. The Expert Group understands that this subject is also being considered by the ICTY Advisory Panel.

c. Oversight

211. Probably the most taxing and time-consuming assignment of the Defence Counsel Units is their oversight responsibility regarding eligibility for assigned counsel and amounts payable to defence counsel. The Units audit with great care invoices submitted by defence counsel, challenging and resolving questionable items when appropriate, taking into account the need and reasonableness of each item billed, and they establish maximum monthly reimbursable hours for different defence team members. When suspects or accused are informed of their rights to assigned counsel, the Units investigate to determine whether the

suspect or accused is entitled to assignment of counsel. It has been noted that in some cases, for example a contempt proceeding involving witness bribery, persons who may be called upon to serve as witnesses may need assigned counsel as much as a suspect or indictee, but no provision exists for the furnishing of such legal assistance.

212. As can be expected, disagreements have arisen between the Units and assigned counsel regarding the allowability of items invoiced and there are also disagreements regarding the standard of indigence required for assignment of counsel. The ICTY Tribunal has had occasion to rule on the latter and has held that the standard for indigence may not be excessively stringent. This appears to be in keeping with the spirit of the Statute. Indeed, if assigned counsel is initially denied, an accused may reapply on a showing of changed economic circumstances. Recently, the ICTY Registry withdrew an assignment of counsel because it found a change in the economic circumstances of the accused warranting such action. The ICTY Trial Chamber, however, reversed the Registrar's decision.

213. It is plain that the Registries are doing what they can to exercise reasonable control over the cost of assigned defence teams, but factors beyond their control such as the length of pre-trial and trial proceedings as well as the inability, as a practical matter, to verify in absolute detail every item for which they are being invoiced leave open the possibility of abuse. Perhaps a requirement for certification to the Chamber by each assigned counsel as to the accuracy of and their entitlement to payment for each item covered by the invoice would help to further deter carelessness or worse. This is in no way to suggest that there is a widespread practice of improper billing by defence counsel, but rather indications that there may have been some less than scrupulous in their billing practices and that this problem should be addressed.

d. Training programme

214. Owing to the unique character of the Tribunals and the elaborate Rules of Procedure and Evidence as well as the numerous guides, directives and other rules governing practice, many lawyers representing accused are significantly disadvantaged by their unfamiliarity with the subject matter. This is compounded in the case of those lawyers who are also untrained in the common law adversarial system. The result has been a degree of inefficiency in their representation, which tends to prolong and delay proceedings. Extensions of time to meet various deadlines are frequently sought and granted because of such factors. And some of the slowness in the preparation of cases is also attributable to them.

215. In an effort to address such issues, initiatives have been taken at both Tribunals to conduct training programmes for defence counsel. Thus, in ICTY, it has been suggested not only by judges and court administrative personnel but by experienced defence counsel as well that a short training programme to introduce inexperienced lawyers to the rudiments of ICTY practice should be developed by either the Registry or the Associations of Defence Counsel, or both. The Expert Group has discussed this with the ICTY Registry, with a representative of an ICTY Association of Defence Lawyers and with the Advisory Panel. There appears to be a consensus that such a training programme would be useful in helping to expedite ICTY proceedings. Indeed, we understand that a proposal is under discussion with the European Union to fund such a programme. Similarly, in ICTR a workshop with a training component has been designed in cooperation with a defence counsel association and is expected to be held shortly.

e. Code of Professional Conduct

216. Assigned Counsel in both Tribunals are obliged to conform to a Code of Professional Conduct promulgated by the respective Registries with the assistance of the Defence Counsel

Units and the Advisory Panels. The Code is derived from and quite similar to those applicable to attorneys in national jurisdictions. It prescribes the obligations of counsel to clients, the Tribunal and others. Consideration is now being given by the Registries and the Advisory Panels to strengthening the enforceability of the Code in collaboration with national bar associations.

217. Although there have been instances of alleged serious professional misconduct by counsel (both assigned and prosecution), which the Tribunals have had to address in contempt proceedings or otherwise, they have been relatively rare. Accordingly, this type of misconduct does not appear to have a significant bearing upon the effectiveness of the functioning of the Tribunals. Suspected solicitation at ICTY of clients by some attorneys through fee-splitting arrangements referred to above, while presenting troubling aspects, will probably diminish or disappear altogether as future ICTY cases focus increasingly on leadership figures. Such indictees are unlikely to be influenced in their choice of counsel by such considerations and may also be less likely to seek or be eligible for assigned counsel. In any event, the Expert Group has invited the attention of the ICTY Advisory Panel to the issue.

f. Changes of counsel

218. The Expert Group observed that in a number of cases, in ICTY as in ICTR, there appeared to be an excessive number of changes in assigned counsel with obvious resulting increases in the amounts paid in legal fees attributable to inevitable duplication in legal work. The Group was informed that the Registries are on the one hand sensitive to the wishes of the accused regarding counsel and, on the other hand, also sensitive to the cost and other implications — delay, for example — when changes are permitted. The Registries must also cope with instances of assigned counsel seeking to be relieved of their assignment. The criterion established by the Tribunals — indeed, in the case of ICTR, by the Rules themselves — for permitting changes is a showing of exceptional circumstances. There have been some instances in which requested changes were denied. In one such case, the denial was appealed and was reversed by the President of the ICTY Tribunal. In another, where an assigned counsel sought to be relieved at a late stage in a case, his request was denied by the Appeals Chamber. While appreciating the Registry's policy of respect for the wishes of the accused regarding assigned counsel, the Expert Group recommends that the requirement for exceptional circumstances be adhered to, especially if there is any indication that a motion to change counsel is in any way related to efforts by the accused to improve on existing financial arrangements with counsel. (Comments on changes of counsel are also made in paras. 225-234 below.)

g. ICTY Defence Counsel Association proposals

219. In addition to the suggestions, previously referred to, regarding judges assigned exclusively to the Appeals Chamber, a single independent investigating judge and a training programme, and ICTY Defence Counsel Association has advanced the following proposals:

"Creation of an Office of the Defence

"There exists a 'defence room' used by all defence counsel that has three computers, a fax machine and a photocopier. Internal and local phone calls are free, international calls are not.

"What is suggested is an office, manned by an administrator and secretary paid for by the United Nations, that would have the function of coordinating the defence requirements of the defence teams in every trial and appeal. This would include the

vital functions of establishing a library of decisions and rule/procedure modifications, acting as a central 'clearing house' and liaison point with the Registry, and coordinating the training envisaged under paragraph 3, *post*, and the creation and maintenance of an Internet web site.

"Such an office would streamline the administration of defence counsel, save very considerable Registry time by providing a single reference point (as opposed to the existing system of trying to deal with individual lawyers) and vastly improve the efficiency and competence of defence activity. That should result in shorter and more efficient proceedings and, overall, cut costs.

"*Defence counsel -- qualification* ...

"In order to make any sense of representation before ICTY, it is imperative that counsel are conversant with the working languages and practices of the Tribunal and have access to the decisions and precedents.

"It has been suggested that where there is only one counsel, he or she *must* be capable of working in either English or French; where there are two, *at least one* counsel must be so capable.

* * *

"*Remuneration of counsel and DSA*

"The current rates do not begin to reflect the seriousness and nature of the cases. In publicly funded cases in the United Kingdom of Great Britain and Northern Ireland, the Netherlands, France and Germany, lawyers of 20 years' experience would get two to three times the hourly rate for a relatively straightforward murder case. To add to the problems, there is no payment at all for work done in excess of 175 hours per month. A 60-hour working week is commonplace for a senior lawyer and the disparity is unjustifiable. When ICTY was first set up, the International Bar Association recommended an hourly rate of US$ 200, sensibly recognizing that to attract lawyers of the right experience and quality, who had to concurrently pay their share of their home-based Chambers or partnership, such a figure was appropriate.

"The daily subsistence allowance, only US$ 183 in any event, is currently being reduced by 25 per cent after 60 days; that reduced rate is simply inadequate to try to maintain a temporary domestic and law practice base in The Hague, a city not noted for its low cost of living."

220. With respect to the proposed creation of an Office of the Defence, such an office would doubtless facilitate the work of defence counsel. However, it appears to the Expert Group that an arrangement of this nature should not be the responsibility of the United Nations, but rather that of the Association, with the cost borne by the latter. Presumably, the legal fees reimbursed by the United Nations already include a factor representing overhead costs and the cost of international phone calls is presumably reimbursable separately as an expense item. The ICTY contribution of the defence room would seem to be a reasonably sufficient measure for the convenience of defence counsel. The Expert Group has been informed that all important Chambers decisions and all rule modifications are currently made available to defence counsel.

221. With respect to the proposal for a training programme, the Expert Group has already endorsed such a measure. The Group agrees with the additional language qualification suggested and notes that the ICTY Registry currently requires language proficiency certificates.

222. With respect to the proposal regarding remuneration and DSA, the Expert Group, as noted above, understands that this matter is, as it should be, under consideration by the Registry and the Advisory Panel. The budgetary implications are obvious, as are the consequences if defence counsel are not compensated fairly and reasonably.

h. ICTR Defence Association proposals

223. For its part, an ICTR Association of Defence Advocates has also put forward a number of proposals. It has pointed out the need to improve facilities (space, office equipment and local transportation) in Arusha. It has also stressed the need for unrestricted travel to Arusha to visit clients (i.e., without the need for prior clearance of travel by the Registry) and, once in Arusha, for unrestricted access to clients every day in the week and at all times during the day. The Association has also requested the issuance by the Tribunal to counsel of a diplomatic passport or other similar document which would make it much more convenient for the defence to travel and conduct their activities with minimum hindrance. It has also made the following proposals:

"The recognition and financing of the Association of the Defence Advocates

"It will be noted even from a casual glance of the Statute establishing the Tribunal as well as the Rules of Procedure and Evidence that whereas the Office of the Prosecutor and his/her roles are provided and set out in detail alongside the role and functions of the judges and the Registrar, the role of the advocates is hardly provided for. Indeed, one could easily form the impression that defence counsel were not expected to play a useful role in the Tribunal's mandate. It is within the context of this background and the attendant fact of the numerous problems encountered by the defence lawyers that a substantial number of defence attorneys came together and established an Association of Defence Advocates. However, given that the creation of the organization was a spontaneous act of the advocates rather than being an organ established by the Statute, the relationship of the Association vis-à-vis the other organs of the Tribunal as well as the role it can or should play in assisting the other organs in the proper administration of justice are rather amorphous. To enable the lawyers' Association to be effective, we propose the following steps:

"1. The existence and fundamental role of the lawyers' Association should be formally recognized both within the Statute and the Rules of Procedure and Evidence.

"2. A secretariat should be set up within the precincts of the Tribunal, which secretariat should be appropriately funded by the Tribunal's resources. This secretariat should include a fully equipped office together with appropriate personnel who should be recruited by the Association but paid by the Tribunal. Such a secretariat would facilitate necessary communication between the officials of the Association as well as being a central point for the Advocates' consultations.

"3. There ought to be adequate facilities in place for the defence equal to those provided for the Office of the Prosecutor. The current situation is disproportionate to the extent that the facilities made available to the defence are at a bare minimum. The defence is taken for granted in terms of facilities, personnel, remuneration and authority to carry out various activities. It is as if the defence were an unnecessary irritation that the Tribunal can ill afford to support. There can be no effective system of justice if the defence is not accorded the equality of arms."

224. With regard to the above, the Expert Group noted that office space and equipment placed at the disposal of defence counsel had indeed, until recently, been inadequate. However, during the Group's visit to Arusha the number of offices for defence had increased from two to four and additional PCs, facsimile and photocopying machines had been procured. Prompt provision of documentation was still a problem and this situation will probably not be entirely resolved until the new ICTR software system referred to above is entirely operational. As regards the establishment of an Office of Defence Counsel, the Expert Group reaffirms its views set out in paragraph 220 above.

i. Issues regarding assigned counsel in ICTR

225. The wording of article 20(4)(d) of the ICTR statute, which is identical (except for the inclusion of the feminine gender in the ICTR pronouns) to that of article 21(4)(d) of the ICTY statute, entitles an accused "to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it."

226. This article is further elaborated on in rule 45 of the Rules of Procedure and Evidence of both Tribunals, entitled "Assignment of counsel", which, with minor differences of wording between the Tribunals, provides that the Registrar shall keep a list of qualified counsel who have indicated their willingness to be assigned by the Tribunal to indigent suspects or accused; the criteria for the determination of indigency shall be established by the Registrar and approved by the judges. If these criteria are met, "the Registrar shall assign counsel from the list".

227. Despite the apparently clear wording of rule 45, the term "of his or her own choosing" in the Statute has given rise to considerable controversy in ICTR. The extreme position taken by counsel for some accused is that the expression is applicable, not only to cases in which the accused himself pays for his counsel, but to those in which counsel is assigned. Under this interpretation the accused, if indigent, would still have the unfettered right to freely select his counsel, without necessary reference to any predetermined list, and to have that counsel paid for by the Tribunal.

228. The opposite interpretation would rely strictly on the wording of rule 45 and would give the Registrar, not the accused, complete freedom to select and assign counsel from a previously established list.

229. The practice followed until 1998 in ICTR has been to assign counsel from a list, but taking full account of the wishes of the accused. Thus, in general, the accused selected his own counsel from the list of counsel established by the Registrar. Indeed, in cases where the accused desired counsel not on the list, the Registrar has at times added the counsel, with the latter's consent, to the list, in order to take account of the wishes of the accused.

230. The Tribunal itself has developed some jurisprudence on this matter. Thus, in *Ntakirutimana*, the Tribunal on 11 June 1997 declared that "article 20(4) of the Statute cannot be interpreted as giving the indigent accused the absolute right to be assigned the legal representation of his or her choice", but that "nonetheless ... mindful to ensure that the indigent accused receives the most efficient defence possible in the context of a fair trial, and convinced of the importance of adopting a progressive practice in this area, an indigent accused should be offered the possibility of designating the counsel of his or her choice from the list drawn up by the Registrar for this purpose, the Registrar having to take into consideration the wishes of the accused, unless the Registrar has reasonable and valid

grounds not to grant the request of the accused". In *Nyiramasuhuko and Ntahobali*, the Tribunal on 13 March 1998 declared that "in order to ensure the most efficient defence possible in the context of a fair trial, and where appropriate, the accused and counsel should be offered the possibility of designating the counsel of their choice from the list drawn up by the Registrar for this purpose, the Registrar having to take into consideration the wishes of the accused and counsel, along with, namely, the resources of the Tribunal, competence and recognized experience of counsel, geographical distribution, a balance of the principal legal systems of the world, irrespective of the age, gender, race or nationality of the candidates".

231. In 1998, the Registrar decided, in pursuance of the geographical distribution criterion in *Nyiramasuhuko*, to introduce a temporary moratorium in respect of the assignment of counsel of Canadian and French nationality, on the ground that those nationalities were over-represented among assigned counsel. (The list developed by the Registrar comprised, as of 10 May 1999, the names of 151 counsel, including 24 Cameroonians, 20 Canadians, 14 French, 13 Kenyan and 12 Belgian nationals, but this distribution was not that of lawyers actually assigned to ICTR cases). Thus, the effect of the Registrar's decision was to continue assigning counsel from the list, but excluding Canadian or French nationals. The Expert Group has been informed that, the limited objective of greater diversification having been achieved, the moratorium was lifted on 27 October 1999.

232. In an appeal in *Akayesu*, the accused sought relief against the Registrar's denial (after five previous changes of counsel) of an assignment of a further counsel of Canadian nationality. On 27 July 1999, the Appeals Chamber dismissed the substance of the motion, but asked the Registrar to assign the requested counsel to Akayesu on the ground that the Registrar had given the Appellant a legitimate expectation that the counsel in question would be assigned to represent him.

233. The Expert Group notes in this regard that Akayesu was at his sixth change of counsel since his first appearance before the Tribunal 38 months earlier. This despite the text of ICTR rule 45(H) (not present in the ICTY Rules), which provides that "*under exceptional circumstances*, at the request of the suspect or accused or his counsel, the Chamber may instruct the Registrar to replace an assigned counsel, upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings" (emphasis added).

234. The Expert Group notes the scrupulous and extensive manner in which the Tribunal has respected the wishes of the accused regarding assignment and change of individual counsel. Respect of such wishes should at the same time take into account the requirements for a fair and expeditious trial. On balance, therefore, the Expert Group is of the opinion that the Nkatirutimana declaration provides a clear basis for future action in this regard. If in the future the Registrar, after consultation with the judges, considers it desirable to improve the geographical spread of the list of counsel, this might be done by establishing nationality priorities for adding new names to the list, rather than by denying assignment of those already on the list. The lifting of the moratorium is therefore viewed by the Expert Group as a constructive measure. The Expert Group understands that ICTR is considering an alternative procedure, namely to group lawyers on the list into three categories representing geographical regions and the main legal systems. Detainees would be invited to choose three names from the list, no two of which could be of the same nationality or belong to the same grouping. The Registrar would then assign one of the three choices as defence counsel. In any event, the Expert Group recommends that rule 45(H), which limits changes of counsel to exceptional circumstances, should be more strictly observed.

(vi) Library and Reference, and Archiving

235. The functions of these units at ICTY and ICTR are explained by their titles. The ICTR Library had only recently (May 1999) been established. Neither presented issues requiring consideration by the Expert Group. The Expert Group notes, however, that, in view of the extensive research needed by the Judges, the Prosecutor and the defence for their work, the Library and Reference Units play a key role, and should have the necessary resources.

(b) Administrative Services Division

236. The functions of this Division encompass traditional administrative responsibilities, better suited to analysis and comment by United Nations audit-type activities, such as the Office of Internal Oversight Services, than by the Expert Group. And indeed, in ICTY these functions along with others were the subject of a recent report by the Office of Internal Oversight Services in June 1999 (A/54/120), which judged the functions to be performed satisfactorily. However, we have noted in our report the need to ensure that the Language Services sections of the Registries better contribute to the effective functioning of both the Chambers and the Office of the Prosecutor. It is essential that required resources be provided and that priorities be adhered to in the translation of documents. Otherwise, Court delays will be unavoidable. In this regard, the Expert Group recognizes the extraordinary difficulty which at times can confront the Language Services sections in their efforts to meet the fluctuating needs of the Chambers for translations from English to French, and from French to English. The sections attempt to prudently balance their staff as between the two types of translators on the basis of reasonably forecast requirements and to avoid overstaffing by outsourcing to deal with temporary peak requirements. But when surges in translation requirements occur owing to the number of unanticipated submissions by the parties and sufficient outsource capacity is not available, priority needs cannot be fulfilled. The Expert Group suggests that perhaps this problem might be alleviated if the Chambers, at the inception of a case, were to require the parties to provide, on an ongoing basis, as much advance notice as possible to the Language Services Section with respect to the likely date, number and size of documents they expect to submit as well as the language in which the document will be submitted. In ICTR, the Expert Group understands that the Office of Internal Oversight Services was to conduct a follow-up review of the Division in late October 1999. This review would be the third conducted by the Office over the past three years in ICTR.

(c) Office of the Registrar

(i) Issues relating to the Chambers

237. The Registrar is, pursuant to article 17 of the ICTY Statute and article 16 of the ICTR Statute, "responsible for the administration and servicing of the ...Tribunal". Rule 33 of the Rules of Procedure and Evidence of both Tribunals contains the common language that the Registrar "shall assist the Chambers, the plenary meetings of the Tribunal, the judges and the Prosecutor in the performance of their functions. Under the authority of the President, the Registrar shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication."

238. We have noted above the uniqueness of the responsibility of the Registrars with respect to both the Chambers and the Office of the Prosecutor. Indeed, in view of this, the Expert Group deems it a remarkable tribute to the executive and administrative ability of the ICTY Registrar that the administrative aspects of that Tribunal's functions and operations have been found in United Nations audits to have been conducted in an efficient manner, with only relatively minor improvements or remedial measures recommended. Similarly, it is

also to be commended that in ICTR, following the appointment of a new Registrar in March 1997, the Office of Internal Oversight Services, in 1998, noted the improvement experienced in all areas of administration. In both Tribunals, there has been cooperation in the working relationship between the Registrars and the other organs of the Tribunals. And many disagreements have been resolved in the wider interest of international criminal justice as a whole. Nevertheless, some remain, and are discussed in paragraphs 239 to 251 below. In ICTR, there are others. These were identified and discussed in an address by the President of ICTR to the General Assembly on 8 November 1999 (see A/54/PV.48).

239. Although the President is described in the Rules of Procedure and Evidence as supervising the activities of the Registry, differing interpretation of the Statutes has led to some issues in both Tribunals. On the one hand, the Registrars understandably are concerned that the respective Statutes, in stating that "the Registry shall be responsible for the administration and servicing of the International Tribunal", require that they exercise authority over all administrative matters pursuant to delegations of authority from the Secretary-General. These, in the view of the Registries, include all administrative matters affecting the functioning of the Chambers. From the standpoint of many of the judges in both Tribunals, however, it is deemed essential that the Chambers, first, maintain some degree of general control over the manner in which they are serviced and, secondly, directly control such matters as the selection and evaluation of the legal and secretarial support assistance provided to the Chambers as well as the determination of budgetary needs for such activities internal to the Chambers as are necessary for their proper functioning. In both Tribunals, there is agreement between all concerned, Chambers as well as Registry, that the Chambers are the heart and central focal point of the Tribunal. However, there is no unanimity as to whether the Chambers should be placed in the position of having to satisfy the Registry as to the essentiality of its needs with respect to its own internal legal and administrative functioning. As an example, the needs of the Chambers with respect to judges' Legal Assistants are deemed by the judges to be such a matter.

240. Accordingly, in ICTY, the Chambers have informed the Registry of a reorganization proposal under which such matters would be brought within the direct administrative control of the Chambers. The Registry has, however, indicated its concern that the Statute does not permit such a reorganization and has proposed an organizational restructuring aimed at attempting to accommodate the wishes of the Chambers while at the same time retaining financial and administrative supervision.

241. While the Expert Group fully appreciates and respects the concerns expressed by the Registry, it seems clear to it that the effective functioning of the Chambers may be enhanced if the Chambers, as the judicial organ of the Tribunal, exercise a greater degree of control over internal judicial administrative matters, including its own work schedule, its staff and financial resources needed for internal functioning.

242. In a note which he prepared after consultation with the Presidents and Registrars of the two Tribunals (A/51/7/Add.8, annex II), the Legal Counsel dealt in a general way with the relationship between the Chambers and the Registry. The Expert Group, therefore, proposes to address only the few specific issues that have been brought to its notice, none of which seem to be insurmountable. Although they apply in different measure to each Tribunal, they are dealt with jointly for reasons of economy of presentation. In addition to the question of internal Chambers administration, dealt with in paragraphs 239 to 241 above, there are three such issues: (a) what control can the judges have over the recruitment of their judicial assistants and secretaries; (b) who can supervise and evaluate the performance of those judicial assistants and secretaries, and who can sign their performance evaluations

(this is, in fact, the practice in ICTR); and (c) to what extent can the judges control the budget proposals in respect of the Chambers.

243. On the first question, inasmuch as the judicial assistants are paid out of the United Nations budget, the Expert Group believes that the Member States will be interested in the nationals of all States having equal opportunity to submit their candidacies. Accordingly, the Group believes that the normal rules with regard to advertisement of these posts should be followed. In the selection of the successful candidates, the Expert Group feels that the judges should have the decisive voice. The Expert Group understands that at present in both Tribunals a system has been devised whereby a judge chairs the selection committee and has the decisive voice in recommending a candidate to the Tribunal appointment and promotion bodies. The Expert Group also understands that this system on the whole satisfies the judges. The Group believes that this system should be continued. Where a judicial assistant or a secretary is to serve a particular judge, that judge could be a member of the selection committee and have the decisive voice in the selection.

244. On the second question, the authority for recruitment should extend to other related aspects of personnel management, and specifically to performance evaluation. After having been selected by the judges, the judicial assistants will work for the judges and under their direct control and supervision. The judges should therefore be responsible for, and sign, performance evaluations. The point has been made that the judges are not United Nations staff members and that only staff members can supervise and sign the performance evaluations of other staff. While indeed the judges are not staff members, the Expert Group understands that they can be regarded as United Nations officials. The Expert Group has been informed that, at United Nations Headquarters in New York, some individuals who are officials, but not staff members, exercise supervision over staff, and the Expert Group believes this precedent is appropriate to the special position of the judges in relation to their judicial assistants and secretaries and thus enables them to sign the related performance evaluations.

245. Finally, insofar as the submission of budget proposals for the Chambers to the General Assembly is concerned, the Expert Group is of the view that the judges are in the best position to determine their own needs and should be entitled to submit proposals which they feel satisfy those needs. While indeed the Registry, with its administrative experience, should be entitled to comment to the judges on those proposals before they are finally submitted, the judges should be entitled to the final say on the nature and form of those proposals. Indeed, as regards each of the Tribunals, the President, as the senior official of the Tribunal, should feel free to transmit proposals and observations on the entire Tribunal budget to the Registrar, without prejudice to the authority of the latter to submit to the Secretary-General the overall budget proposals for the Tribunal as a whole.

246. The Expert Group believes that the appropriate course might be for the Secretary-General, whose authority in administrative matters over the Registrar is unquestioned, to issue either a revised delegation of authority or an administrative instruction realigning, to the Bureau of the Chambers, control over the internal administrative matters referred to above, the details of which would be developed through consultation between the Office of Legal Affairs, the Department of Management, the Tribunal Presidents and the Registrars.

247. Over and above the bureaucratic language which can be developed to avoid unnecessary conflict, the Expert Group cannot sufficiently stress that the goals of the Chambers and of the Registry are one and the same, that is, to ensure fair and expeditious justice in the context set out by the Statute of each of the Tribunals. In view of this identity of objective, there is no reason why cooperation, and never confrontation, should not be

the norm governing relations between both organs. The success of the one is, after all, the success of the other.

(ii) Issues relating to the Office of the Prosecutor

248. The organizational structure of the Office of the Prosecutor appears to the Expert Group to be efficient and functionally well suited to its mission, with perhaps one exception: it does not have an integrated administrative organization and instead is served by the Registry with respect to all of its administrative requirements. This is probably unique. In all or virtually all national jurisdictions, the administration of court systems is separate from that of prosecutorial functions. The missions, needs and priorities of judicial and prosecutorial systems differ and may at times conflict. This is almost inevitably bound to present problems for a single entity, such as the Registry, in attempting to provide support services for both simultaneously.

249. Ordinarily, the Registry of a judicial organ would deal only with personnel and other administrative needs relating to the responsibilities of the court. However, in the case of the Tribunals, the Registry's responsibilities include personnel matters for the Office of the Prosecutor, the care and protection of witnesses, the detention of suspects and indictees, and other matters such as public information. However, the needs of the prosecution with regard to personnel, the availability and protection of both potential and actual witnesses, access to detainees and public relations do not necessarily coincide with what United Nations rules administered by the Registry provide, or with what the Registry considers to be within the scope or impartial nature of its duties. For example, interns utilized by the Office of the Prosecutor are generally assigned to assist with the trial of one or more cases and become valuable assets of the prosecution team. It is extremely disruptive for them to be required to leave the Tribunal in mid-trial or even in final trial preparation stages. Yet the Organization's six-month limitation on their length of service and the six-month interval that must elapse before they can be re-recruited causes this result. To avoid this unfortunate situation, the Expert Group recommends that consideration be given to allowing, through an exception to the rules, that interns in the Office of the Prosecutor assigned to trial work be appointed for one year or the duration of the trial to which they are assigned, whichever is longer.

250. Indeed, under national judicial practice it would probably be questionable that, as is the case in ICTY, the Office of the Prosecutor and her entire staff physically be located in the same building and in such close proximity to the offices of the Chambers. While it is abundantly clear that both organs have functioned in conformity with the highest ethical standards, irresponsible accusations by indictees and others may have created a contrary belief by segments of the public in the former Yugoslavia. That the two organs share the same administration does not help matters. And although dividing the Registry into two separate administrative structures with one integrated into the Office of the Prosecutor and the other servicing the Chambers may have budgetary implications, it should be seriously considered.

251. The Prosecutor's insights with regard to her Office's organizational structure parallel those of the Expert Group. She has stated that a self-administered Office of the Prosecutor would be able to function more effectively if it assessed its own needs, sought its budget accordingly and then deployed its resources. From the standpoint of the Prosecutor, if both her offices had their own translation units, instead of relying on those of the Registry, the prosecution would be in an improved position with respect to prioritizing and controlling the fulfilment of its translation needs. Similarly, her Office's functions would be aided by having its own personnel to deal, in both Tribunals, with the protection and care of witnesses

in pre-trial periods.[49] In addition, in ICTY as in ICTR, the Office of the Prosecutor has had concerns about the independent, neutral role of the Registry with regard to witnesses. Fairly delicate witness relationships may take investigators and attorneys a long time to build to a level of trust and cooperation convincing witnesses to testify. However, the Registry's policy of neutrality may lead its representatives to emphasize to witnesses that they have a right not to testify, and this would tend to undermine prior efforts of the Office of the Prosecutor.

252. In the light of the above, the Expert Group recommends that the Secretary-General consider a realignment of administrative matters as between the Registry and the Office of the Prosecutor, through a re-delegation or administrative instruction, as set forth in paragraph 246 above in respect of the Registry, better reflecting the independence of the Prosecutor and more responsive to its administrative support needs. Thus the Registry's court administrative functions would remain essentially unchanged, apart from the modest transfer of responsibilities to the Chambers with respect to the latter's degree of control over the judges' legal assistants, secretaries and internal administrative matters. The Office of the Prosecutor would assume administrative responsibility with regard to its own budget, its staff, including language staff and public information, and the care and protection of its potential witnesses during investigations and also, if necessary, while trials are in progress. The Registry would continue to provide all support services other than those enumerated above. Needless to say, if and to the extent that the Registrar and the Office of the Prosecutor reach agreement resolving the manner in which such administrative matters are to be handled, thus obviating the need for a re-delegation or administrative instruction, that would plainly be desirable.

V. The issue of a single Prosecutor

253. In its reports on the 1999 requirements of ICTR and ICTY, the Advisory Committee on Administrative and Budgetary Questions, in recommending that an Expert Group be constituted, asked, *inter alia*, that it assess the experience so far of having a single Prosecutor for both international tribunals (A/53/651, para. 66 and A/53/659, para. 85, respectively). Accordingly, the Expert Group submits the following considerations on this issue.

254. If the structures of both ad hoc Tribunals were being first created at this time, serious consideration could perhaps be given, in our view, to a number of fairly basic organizational changes designed, on the one hand, to better clarify the relationship of the Registry to the Chambers and, on the other, to emphasize even further the independent status of the Prosecutor and of her Office. A more self-defined prosecutorial arm, including its own administrative infrastructure, would possibly suggest, as a corollary, the establishment of two separate independent Prosecutors; this because of the different jurisdictions of the Tribunals with regard to subject matter, locales and time periods.

255. We are not, however, confronted with a theoretical new beginning, but rather with a solid body of five years of experience since ICTR was established on 8 November 1994 under a Statute which provided, in its article 15 (3), that "the Prosecutor of the International Tribunal for the former Yugoslavia shall also serve as the Prosecutor of the International

[49] Questions have arisen between the Office of the Prosecutor and the Registry with regard to issues involving the protection of witnesses during investigations. The Registry has taken the position that its responsibilities relate only to post-indictment trial witnesses and that protection arrangements for such witnesses are not applicable to witnesses during an investigation.

Tribunal for Rwanda". Thus, now midway in the life of both ad hoc Tribunals, the question is whether the accumulated experience is such as would require, in the interest of the judicial efficiency and performance of ICTR, that the Security Council amend its Statute in order to provide for an independent Prosecutor for ICTR, presumably at the under-secretary-general level.

256. The Expert Group, in the course of its review of both Tribunals, has not become aware of any overpowering evidence which would favour such a change. It is true that the jurisdiction of both Tribunals is significantly different. It is also true that the apparent support given by the Prosecutor to the Rwanda Tribunal, in terms of actual physical presence, seems somewhat limited; thus for example, during the course of 1998 and the first nine months of 1999, the Prosecutor visited ICTR eight times, for a total of 69 days. These figures, however, may be somewhat misleading, as they do not take into account actual time devoted by the Prosecutor, while in The Hague or elsewhere (for example, New York), to Rwanda affairs, including her communications with Kigali and Arusha; nor do they take into account 12 reciprocal visits to The Hague during the same period by the Deputy Prosecutor for ICTR, amounting in total to 65 days.

257. Nevertheless, the existence of a single Prosecutor has doubtless avoided the complexities potentially associated with varying interpretation by the Office of the Prosecutor, as between The Hague and Kigali, of articles in the Statutes and provisions of the Rules of Procedure and Evidence common to both Tribunals. Such differences would have required resolution by the respective Trial Chambers or the common Appeals Chamber, and until then matters that could be of considerable importance might be left in an uncertain state. Also, in the long-term perspective of the establishment of the permanent International Criminal Court, the single Prosecutor of that Court will no doubt welcome a common body of prosecutorial interpretation, the first to be developed since the Nürnberg and Tokyo trials. A single Prosecutor has also facilitated, and will continue to facilitate, the exchange of staff and of experience between both Tribunals.

258. Finally, at present, with more cases expected to move towards the appeal stage, there is an even more pronounced need for a common outlook and a consistency of approach before the Appeals Chamber. This would surely be facilitated if the current single Prosecutor system is retained.

259. On balance, therefore, the Expert Group is of the view that, having regard to experience, there seems to be no compelling reason for it to recommend that the Security Council amend the Statute to provide an independent Prosecutor for ICTR. The Expert Group trusts, however, that the Prosecutor will find occasion for more frequent visits to ICTR, covering longer periods of time, and for continuing close oversight of the ICTR prosecutorial operation in order, *inter alia*, to ensure similar standards with regard to the supervision she exercises over her staff, whether at The Hague or in Arusha/Kigali. At the same time, the Group is of the view that some recognition should be given, at the appropriate time in the future, to the special responsibilities which devolve upon the Deputy Prosecutor in Kigali in terms of the more independent nature of his work, which includes day-to-day contact with senior officials in the Government of Rwanda.

VI. Conclusion

260. As is evident from the present report, aside from the possibly overlong development of firmer case management by the Chambers, the operations and the functioning of the three organs of the Tribunals are, given the constraints to which they are subject, reasonably

effective in carrying out the missions mandated by the Security Council. The effectiveness of the functioning and operations of the Tribunals falls short where they are impaired or limited by factors over which they have little or no control. Yet even where this is not the case, there is clearly room for improvement. Each of the Tribunals' organs recognizes this. The judges of the Trial Chambers plainly intend to expedite pre-trial and trial proceedings by increasingly determined judicial management, with full respect for the rights of the accused, and are sensitive to the issue of unduly long pre-trial detentions. Apart from the question of the number of available judges and the size and manner in which the Appeals Chamber is comprised, the organizational structure of the Trial and Appeals Chambers appears to be entirely appropriate.

261. Furthermore, except as noted above, the organizational structures of both the Registries and the Office of the Prosecutor also appear to be quite suitable for carrying out their missions effectively. As far as the Expert Group is able to judge, optimum use is made by the latter of its well-trained and experienced investigation personnel, attorneys and support staff, again given the constraints under which they function, and which have been discussed above. As noted above, serious questions can be raised about the number of witnesses, presumably also including the number of experts, proposed by both the Office of the Prosecutor and the defence. This issue is inextricably tied to discretionary judgements by the parties as to how to present their cases most effectively, and to the views of Trial Chambers as to when further evidence on a point is not required. Whether optimum use has been made of defence attorneys or, rather, whether defence attorneys have made optimum use of the court's time, is less clear in the light of questions which have been raised about relevant qualifications, training and experience, and other factors in paragraphs 209 to 210 and 214 to 215 above. Nevertheless, it is entirely clear that the Registries and the Chambers have accorded to indigent accused and suspects the consideration and services required by the Statutes.

262. In the opinion of the Expert Group, if all of the various organizational and procedural improvements recommended by it, and those under consideration by the Tribunals themselves were adopted, the outcome would surely be significant expedition in the conduct of pre-trial, trial and appeal proceedings. But at best, such improvements would operate at the periphery of the basic problems identified by the Expert Group. They would not have the spectacular transforming effect of converting the proceedings of the Tribunals into short-term events between initial appearance and final outcome. The Tribunals will still be dependent on State cooperation. Their future cases, with few exceptions, will still be likely to involve extended pre-trial and trial proceedings. This is almost inherent in their nature. For they will continue to deal with complex statutory requirements for establishing the crimes charged and will, in addition, involve the evidence of a variety of witnesses, documents and other materials to establish the responsibility of the accused beyond a reasonable doubt — no simple task under the adversarial system of criminal trials. It is foreseeable that the defence of, and appeals in each case will continue to be vigorous, challenging the prosecution's position wherever possible and conceding on factual matters only when there is no other viable alternative. This, coupled with impediments that cannot be quickly overcome, is a classic recipe for protracted proceedings, interlocutory appeals, multiple motions, lengthy trials and further appeals. In short, the prosecution of cases before the Tribunals can, as is the case with almost every judicial organ, be made more effective and more efficient, but until the Tribunals begin the winding-down process, such improvements are not likely to affect materially the level of financial resources required.

263. There is a further important aspect of both Tribunals which should be noted at this time. This is their international character. ICTY and ICTR, as United Nations bodies, are therefore under a duty, and more particularly having regard to their limited life, to project

that international dimension into their structure and their work so that they may be seen by the international community as credible international judicial bodies. In the view of the Expert Group, that responsibility has been fully met by both Tribunals.

264. It cannot be overemphasized that establishing a new and unique prosecutorial and judicial institution with the task of implementing a complex and not well-defined set of legal norms with respect to extraordinary events in inhospitable environments was inescapably going to involve a lengthy development period. This is especially true given the combination of continuing unusual circumstances in which both Tribunals function as compared with prosecutorial and judicial bodies in national jurisdictions. To the extent that there may have been expectations that the Tribunals could spring to life and, without going through seemingly slow and costly developmental stages, emulate the functioning of mature experienced prosecutorial and judicial organs in national jurisdictions in adhering to a high standard of due process, such expectations were chimerical. No system of international justice embodying standards of fairness, such as those reflected in the creation of ICTY and ICTR, would, under the best of circumstances, either be inexpensive or free of the growing pains that inhere in virtually all new organizations. ICTY and ICTR are no exception. To their credit, they have maintained the highest possible standards of respect for the rights of the accused while at the same time demonstrating, as the Secretary-General has recently reiterated, that there can be no impunity for crimes against humanity.

* * *

265. Thus far the report of the Expert Group, by definition and mandate, has dealt with the dry warp of the law. Its context has been that of adversarial combat between the prosecution and the accused: motions, briefs, orders and the search for a balance between the rights of the accuser and the rights of the accused, under the evenhanded direction and scrutiny of the court. But we would be failing in our human condition if we did not recall the background of the work of the Tribunals and of our own work, the hundreds of thousands of men, women and children who have been the victims, in south-east Europe as in Central Africa, of unspeakable and unforgettable atrocities. Let not the victims, and their close ones, go unmentioned in our report. Let there be a reminder yet again that many once existed who today are no more. Let us be allowed to hope that the international community will find, at a time and place yet unknown, the strength and the resources to recall those who were and to help those who survived, maimed or raped in body or in spirit.

Respectfully submitted by the Expert Group, on 11 November 1999

Jerome Ackerman, Chairman

Pedro R. David

Hassan B. Jallow

Jayachandra K. Reddy

Patricio Ruedas

Executive summary and recommendations

Establishment and mandate of the Expert Group

1. The Group was established by the Secretary-General pursuant to resolutions of the General Assembly requesting an evaluation of the operation of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). In its mandate the Group was requested to focus on the judicial administration of the Tribunals. The Group consisted of Messrs. Jerome Ackerman (Chairman), Pedro R. David, Hassan B. Jallow, K. Jayachandra Reddy, and Patricio Ruedas. It held its first meeting at the end of April 1999.

Working methods of the Group

2. Senior officials of the Secretariat concerned with the Tribunals' work initially briefed the Group. Thereafter, based in The Hague, the Group worked through a study of documentary material supplied by the Tribunals, through interviews at The Hague, Arusha and Kigali with Tribunal personnel and others, and by observing the operations of the Tribunals. The Group also invited submissions from States.

Current structure of the Tribunals

3. Each Tribunal consists of three organs: the Chambers, the Office of the Prosecutor and the Registry. Each Tribunal has three Trial Chambers, with three trial judges allotted to each Chamber. In addition, each Tribunal has an Appeals Chamber with five appeals judges, with the members of the Appeals Chamber for ICTY also functioning as the members of the Appeals Chamber for ICTR. There is a single Prosecutor for both Tribunals, with units of the Office of the Prosecutor located in The Hague, Arusha and Kigali. Each Tribunal is administered and serviced by its own Registrar.

Competence of the Tribunals

4. ICTY has competence over "serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991". ICTR has competence over "serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994".

Unique character of the Tribunals

5. Both ICTY and ICTR combine within one organ prosecutorial and judicial functions that would, in national structures, be clearly separated. Moreover, while in national structures each function would have its own administration, in the Tribunals both are administered by the Registry, which also has an administrative oversight role over them. This situation can lead to friction. Furthermore, while the prosecutorial and judicial functions are independent of the Secretary-General, normal United Nations financial and personnel regulations and rules, administered under the authority of the Secretary-General as chief administrative officer of the Organization, apply to the Tribunals. The Tribunals are also unique in being dependent on the cooperation of Member States, the Tribunals themselves having no coercive powers in relation to their arrest warrants, orders affecting property, obtaining access to victims or witnesses or obtaining evidence. This has led to greater difficulties for ICTY, than for ICTR.

Summary of Tribunals' current workload, and future prospects

6. As of 31 August 1999, in ICTY, 25 public indictments of 66 alleged war criminals were outstanding. Arrests had been made in respect of 17 of the 25 indictments, and 31 accused were in custody. Ten accused are currently in trial proceedings or awaiting judgement. The rest are in detention awaiting trial. These trials are not likely to commence till 2001 at the earliest. While definite predictions are impossible, the Office of the Prosecutor has estimated that it will take about another four years to finish investigations now planned, and at least 10 years to complete foreseeable trial and appeal proceedings.

7. As of 30 September 1999, in ICTR two trials had been completed involving three individuals who have been sentenced. In addition, two sentences had been delivered on guilty pleas, and two further trials had been completed in which judgement is expected shortly. Two additional trials were expected to begin in the near future. There were 34 detainees in the United Nations Detention Facility (including 7 in respect of whom judgements had either been delivered or were expected), with the remaining 27 awaiting trial. Three of the 27 have been awaiting trial since late 1996, and a further 13 since different dates in 1997. About 90 investigations are in progress, and a time period of some 7 or 8 years appears to be a minimum for discharge of the Tribunal's mandate.

Obstacles to effective functioning of the Trial Chambers

8. The effective functioning of the Trial Chambers is impeded by certain factors, causing both **pre-trial delays** (with consequent long pre-trial detention) and **prolonged trials**. Factors resulting in **pre-trial delays** are:

- The time periods given to parties to take various necessary procedural steps prior to commencement of trial, together with the time needed to translate relevant documents;
- Non-availability of courtrooms;
- The number of judges available for trials, taking into account the total number of trial judges, and the fact that some of these trial judges are disqualified from trying certain cases because they have confirmed indictments in those cases or have been involved in related cases;
- The large number of preliminary and other pre-trial motions submitted by each party;
- Other judicial commitments of judges in particular Trial Chambers.

9. The Rules of Procedure and Evidence provide for the provisional release of an accused (i.e., until the date of trial) in special circumstances. Such release would reduce the extent of pre-trial detention. However, it has not been easy for the accused to satisfy the court that special circumstances exist. Consideration might be given to a rule providing for the provisional release of an accused who had voluntarily surrendered and had made an initial appearance, on the basis that if the accused did not reappear for his/her trial, he/she had waived the right not to be tried *in absentia*.

10. While questions have been raised as to whether the procedure provided in rule 61 of the Tribunals' Rules of Procedure and Evidence infringe the rights of the accused by being equivalent to a trial *in absentia*, it would appear that, on balance, this is not the case.

11. Factors resulting in **prolonged trials** are:

- The legal complexity involved in establishing guilt of the crimes proscribed by the Statute;
- The heavy burden of proof on the Prosecutor and the amount of witness testimony often required to discharge this burden;

- The rights given to the defence under the adversarial system of trial, and the defence tactics sometimes adopted;
- The excessive number of motions submitted by the parties during trials;
- Insufficient judicial control over the presentation of evidence by the parties;
- The provision of free legal assistance and the consequence thereof: for ICTY and ICTR, the possibility of 'excessive lawyering'; for ICTR, in particular, the question of whether the accused have a right to select counsel of their choice;
- The civil law/common law combination reflected in the Tribunals' Rules of Procedure and Evidence;
- For ICTY, limited State cooperation (see above).

Possible additional measures for improvement

12. The following additional measures have been adopted or might be considered:

- The trial judges, through the pre-trial judge, might take a more interventionist role in the proceedings;
- When there is no apparent reason for a dispute as to certain facts, the judges might require the party declining to so stipulate to explain why;
- The judges might make greater use of judicial notice in a manner that fairly protects the rights of the accused;
- When the Prosecutor has to establish background facts to crimes of which the accused is charged, one Trial Chamber has accepted the transcripts of witnesses in other proceedings testifying to the same facts; and other possibilities could be explored;
- ICTY judges have adopted a rule which allows an accused to voluntarily make a statement not under oath to the Trial Chamber at the outset of the trial, experience indicating that such statements can have the effect of shortening the proceeding by narrowing issues, eliminating those not disputed, and clarifying matters;
- The direct testimony of a witness might be submitted in advance in written question-and-answer form, thus saving the time spent in giving oral testimony. The witness would later appear in court for cross-examination. Another possibility would be the preparation of a dossier by the prosecution containing witness statements, with comments by the defence, to permit a selection of relevant witnesses by the Trial Chamber;
- Requiring counsel for the accused, following the required disclosures to the defence by the prosecution, to disclose in general terms the nature of the accused's defence, thus enabling the parties and the court to focus on the real issues;
- For ICTY, absence of cooperation by certain States where many high-level indictees are living has been a most important obstacle to the effective functioning of ICTY; greater cooperation would significantly improve ICTY's performance. ICTR, however, has received excellent State cooperation;
- The mission of ICTY would be better fulfilled if high-level political and military figures were tried, rather than lower-level offenders; but recently there have been and there are now prospects of trials of a few such figures. In ICTR, the situation is different, and high-level figures have been tried, are in trial or are awaiting trial.

- While the Rules of both Tribunals provide that where the Tribunal and a national court have concurrent jurisdiction the Tribunal can ask the court to defer to it, only ICTY has a rule under which the Tribunal can defer to a national court; ICTR should enact such a rule.

The Appeals Chamber

13. The Appeals Chamber may hear interlocutory appeals from decisions on preliminary motions, as of right or after leave granted by a bench of three judges (in ICTY), or appeals from final judgements. While the workload of the Chamber was light for an initial period, this is no longer the case. For ICTY, for the period 1998-1999, there were 29 applications for leave to file interlocutory appeals. As regards appeals from convictions or acquittals, one major judgement was handed down and three appeals are pending. For ICTR, there are pending six interlocutory appeals, and five from convictions or sentences. It was anticipated that two appeals will be filed from final judgements during the remainder of 1999.

14. For various reasons, ICTY trial judges sometimes sit in the Appeals Chamber and appeals judges sit in Trials Chambers. This has unsatisfactory consequences and it would be preferable if judges were assigned exclusively to the Trial Chambers or the Appeals Chamber for their entire terms.

Enforcement of sentences

15. The Statutes of the Tribunals provide that sentences imposed by them are to be served in States that have indicated to the Security Council their willingness to accept convicts. Such imprisonment is to be in accordance with the law of the State, subject to supervision by the Tribunal. To date, seven States have agreed to accept convicts. While currently only one convict is serving a sentence, considering the accused now in custody in the two Tribunals, accused who might be taken into custody and potential additional indictees, accommodation might be needed in the future for a significantly larger number of convicts and further arrangements with States would need to be concluded. Reasonable practical solutions have been devised for the situations where a pardon or commutation becomes applicable to the convicts under the law of the State where they are imprisoned and also to deal with the statutory provision that supervision of prison arrangements is vested in the Tribunals.

Office of the Prosecutor

16. The Office of the Prosecutor is organized, both for ICTY and ICTR, in two major units — an **Investigations Division/Section**, and a **Prosecution Division/Section**. An Information and Evidence Section/Evidence and Information Support Unit supports the two major units. The Information Division/Section obtains the evidence to be used by the Prosecution Division/Section in the trials, while the Information and Evidence Section/Evidence and Information Support Unit stores and processes the evidence. Difficulties faced in ***investigative*** work, both in ICTY and ICTR, are:

- The number of distant locales to be visited; difficulties in their accessibility; the large numbers of persons to be interviewed; the need to obtain government permission to do so; the time-consuming nature of that as well as arranging the appointments themselves; the number of documents and other information (often in a language with which the investigators are unfamiliar) to be located and analysed; and arranging for the protection of investigators;
- Recruiting sufficient qualified staff in the various fields involved;

- Limitations arising from United Nations employment rules;
- Language diversity, with resulting translation/interpretation needs;
- Obtaining needed witness, forensic and documentary evidence;
- Deficient State cooperation;
- Difficulties in obtaining travel documents for witnesses;
- The complexity of obtaining the evidence needed to prove the crimes in question.

17. Difficulties faced in ***prosecution*** work, to a greater or lesser degree in both ICTY and ICTR, are:

- Making arrests of accused;
- Formulating appropriate indictments against accused;
- Making disclosure to the defence of evidence as required by the Rules of Procedure and Evidence, and complexities of proof;
- Bringing all witnesses to the Tribunals, and setting up measures of protection for some of them;
- Language diversity, with resulting translation/interpretation needs;
- Dealing with motions and other defence strategies;
- The inability to use information supplied under conditions of confidentiality.

18. The Prosecutor acknowledges that it is essential to expedite trials and that prosecutorial policy should be aimed at this goal. She also is of the view that the Office of the Prosecutor has now reached maturity and that while there might be room for changes with a view to more effective operation of the Office, no significant increases in personnel are needed.

The Registry

19. In both Tribunals, the Registry has a triple function. First, it directly assists Chambers in their judicial work (e.g., preparation of the judicial calendar and maintaining the court records). Secondly, it performs a number of court-related functions which in national practice are entrusted to entirely separate departments (e.g., maintenance of detention facilities and assignment of counsel to indigent accused). And thirdly, it provides general administrative services (e.g., procurement, security). Structurally, in both Tribunals a Judicial Support Services Division of the Registry deals with the first and second functions, an Administrative Services Division deals with the third, while the Office of the Registrar gives overall direction.

20. The Judicial Support Services Division has sub-units dealing with Chambers Legal Support (assisting judges with legal analysis, drafting); Court Management (managing the numerous logistical aspects of proceedings, e.g., hearings, documents); Victims and Witnesses (transporting witnesses to Arusha or The Hague, providing support during their stay there); Detention of Accused; Defence Counsel (assigning counsel to indigent accused and arranging payments to counsel); and Library, Reference and Archiving. Of these sub-units:

21. Court Management is responsible for the management of the courtrooms, the registering and custody of briefs, motions, orders, decisions, judgements and sentences, making arrangements for and maintaining, transcripts and minutes, arranging and setting priorities for interpretation and translation, and maintaining case files. It also has to provide

the parties and the Chambers with an exact and updated picture of the stage of proceedings at any given time.

22. The Victims and Witnesses Unit deals with the major logistical problems involved in bringing witnesses to The Hague or Arusha, protecting them during their stay, making payments compensating them for resulting expense, such as the cost of child care, providing security when required in the form of relocation of witnesses. Making such arrangements while maintaining the safety of the witnesses, and controlling the costs involved, are major preoccupations.

23. The Detention Units are located at The Hague and Arusha and are modern, self-contained facilities. They are governed by rules that accord with the principles and philosophy of applicable United Nations standards. The Units keep the detainees in custody before and during trial. The International Committee of the Red Cross (ICRC) has had regular access to the detainees and reports to the Tribunals on its visits. The ICTY Unit has experienced minor disciplinary problems and also some difficulties through visitors, including defence counsel not always observing relevant rules. The Units also need to respond to requests for cooperative assistance in regard to the detainees from the Office of the Prosecutor.

24. The Defence Counsel Units of the Tribunals make operational the principle that an indigent accused is entitled to be assigned defence counsel paid for by the Tribunals. Some complex issues arise in connection with assignment: the basis on which payments should be made; the qualifications which assigned counsel should have; monitoring invoices and claims submitted by assigned counsel, observance of a Code of Professional Conduct by assigned counsel; and deciding on requests for changes of counsel by accused. In ICTR, difficulties, now largely resolved, had arisen with regard to the extent to which an accused was entitled to be assigned counsel of his choice.

25. The Office of the Registrar is responsible for the administration and servicing of the Tribunals and for assisting the Chambers and the Prosecutor in the performance of their functions. ICTY's operations have been found in United Nations audits to have been conducted in an efficient manner with only relatively minor improvements or remedial measures recommended. In ICTR, improvements have been recently noted in all areas of administration, but some problems remain. The following issues, however, seem to need attention. In relation to the Chambers, it is deemed essential by the Chambers that they maintain some degree of general control over the manner in which they are serviced, and directly control such matters as the selection and evaluation of the legal and secretarial support assistance provided to them as well as the determination of budgetary needs for such activities internal to the Chambers as are necessary for their proper functioning. In addition, the President of ICTR has identified and discussed other administrative issues in an address to the General Assembly. In relation to the Office of the Prosecutor, the main issue seemed to be the desirability and feasibility of its having its own administration in respect of certain functions.

The issue of a single Prosecutor

26. Since the establishment of ICTR five years ago, a single Prosecutor has served both Tribunals. Now, midway through the life of the Tribunals, there does not seem to be any overpowering evidence in favour of having a separate Prosecutor for each Tribunal. While the jurisdictions of the two Tribunals are not identical and the Prosecutor has spent much more time at The Hague than at Arusha and Kigali, she has nevertheless spent a significant time at the latter locations and the Deputy Prosecutor for ICTR has also spent significant periods at The Hague. Moreover, the presence of a single Prosecutor has developed a

consistent body of prosecutorial interpretation in relation to the offences in question, which has been and should continue to be a great advantage. On balance, there seems to be no compelling reason for a change.

Conclusions

27. The operations and the functioning of the three organs of the Tribunals are, given the constraints to which they are subject, reasonably effective in carrying out the missions mandated by the Security Council. However, each of the three organs of the Tribunals recognizes that there is room for improvement. If all the improvements under consideration by the Tribunals themselves, and recommended by the Expert Group, were adopted, there would be significant expedition in pre-trial, trial and appeal proceedings. Nonetheless, in view of the complex nature of Tribunal proceedings noted above, they would not transform Tribunal proceedings into short-term events. Establishing a precedent-setting judicial institution with respect to extraordinary events in inhospitable environments necessarily required a lengthy development period. Both ICTY and ICTR have maintained the highest possible standards of respect for the rights of the accused while at the same time demonstrating that there can be no impunity for crimes against humanity.

Recommendations of the Expert Group

1. In order to reduce delays caused by preliminary motions filed when an amended indictment includes new charges, the periods of time given under rule 50 for filing such motions should be considered as a maximum, which could be shortened at the discretion of the Trial Chamber if it believes the circumstances so permit or require (para. 37).

2. In order to eliminate the difficulties that result from the disqualification from trials of judges of Trial Chambers who confirm indictments, further consideration should be given to the view that confirmation of an indictment automatically results in disqualification of the confirming judge (para. 45).

3. In order to reduce unduly long pre-trial detentions, the Tribunal might wish to consider whether the right of an accused who had voluntarily surrendered to be tried in person is waivable by the accused following his initial appearance and, if so, consider a consequent rule that would provide for provisional release if the Trial Chamber were satisfied that: (a) the accused had freely and knowingly consented to trial *in absentia*, (b) the personal circumstances of the accused, including character and integrity, as well as State guarantees for his appearance and other appropriate conditions were such that the likelihood of his not appearing for trial were minimal, and (c) defence counsel gave a solemn commitment binding themselves to participate in a trial *in absentia*, should one occur (para. 54 and footnote 14).

4. (a) In order to facilitate a subsequent trial, the rule 61 proceeding might be amended to permit evidence produced at such a proceeding by the prosecution to be utilized at a subsequent trial following the arrest of the accused if at the time of that trial the witness has died, could not be found, was incapable of giving evidence or could not be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable; moreover, to protect the interest of the accused, counsel could be assigned to represent the accused during the rule 61 proceeding (footnote 16);

(b) Alternatively, in order to avoid the disqualification of the entire rule 61 Chamber and to shorten the proceedings, the rule 61 proceedings could be amended to vest in the confirming judge alone the power, upon application by the Prosecutor and on satisfaction

of the judge, to issue an international arrest warrant and order the freezing of the assets of the accused (footnote 17).

5. In order to reduce the potential for obstructive and dilatory tactics by assigned defence counsel, the amount of legal fees allowed might properly take into account delays in pre-trial and trial proceedings deemed to have clearly been caused by such tactics; though this is not to recommend that the Chambers become enmeshed in all of the details of remuneration of assigned counsel, but rather that they simply exercise an oversight function (footnote 23).

6. In order to curtail excessive motions, the Chambers might:

- Consider a rule requiring that, before any motion is presented, it first be discussed between the prosecution and the defence, between themselves, with a view to resolving the matter by agreement (para. 71);
- Consider the so-called "rocket docket" techniques utilized by the United States District Court for the Eastern District of Virginia to move cases expeditiously (para. 71);
- Consider adapting for use by ICTY and ICTR the "omnibus hearing" process for managing motions before trial (paras. 72-73);
- Consider requiring that, unless otherwise ordered by the Trial Chamber, motions be made and responded to orally (para. 74).

7. In order to expedite trials, the Trial Chambers might accelerate and make general the practice of forcefully utilizing existing rules dealing with the presentation of evidence or promulgate and implement further rules to assert greater control over the proceedings, including adjournments, while protecting the legitimate interests of the accused (paras. 76-78).

8. In connection with the objective noted in 7 above, in attempting to control the presentation of witness testimony, the Trial Chambers might consider, to the extent not currently the practice, permitting offers of proof to protect the rights of a party whose evidence is excluded (footnote 25).

9. In order to further expedite trials, the functions currently assigned to the pre-trial judge to try to reach agreement between the parties on the conduct of the trial might be expanded into a more interventionist role, *inter alia*, including authority to act for the Trial Chamber under ICTY rule 65 *ter* (D) and making a pre-trial report to the other judges with recommendations for a pre-trial order establishing a reasonable format in which the case is to proceed (para. 83).

10. To help in eliminating the need for the introduction of potentially massive amounts of evidence, judges might require that, when there is no apparent dispute as to certain facts, the party declining to so stipulate, explain why (para. 84).

11. Further consideration should be given to greater use of judicial notice in a manner that fairly protects the rights of the accused and at the same time reduces or eliminates the need for identical repetitive testimony and exhibits in successive cases (para. 85).

12. In order to reduce the length of trials, Trial Chambers might consider:

- The use of prepared testimony, i.e., written testimony submitted in advance in question-and-answer form, with an opportunity given to the other party later to object to questions, and the witness being later made available for cross-examination; and/or
- The preparation of a dossier by the prosecution containing witness statements, with comments by the defence, to enable the Trial Chamber to select relevant witnesses

for oral testimony and to admit certain witness statements as documentary evidence (para. 88).

13. In order to expedite the trial and enable the Trial Chamber to focus on the real issues, it might:

- Require counsel for the accused, following disclosure by the prosecution of its case to the defence, to describe in general terms the nature of the defence, indicating the matters on which he takes issue with the prosecution and stating the reasons in relation to each. This course would also simplify the prosecution's duty to make disclosure, which at present calls for prosecution guesswork and can thereby cause trial delay as well as the incurrence of unnecessary prosecution time and expenditure (para. 89);
- Require counsel for the accused, when cross-examining witnesses able to give evidence relevant to the defence, to inform them of the nature of the defence if it is in contradiction of their evidence (para. 90).

14. As is the consensus among ICTY and ICTR judges, the major objectives of the Security Council would be fulfilled and the resolve of the international community demonstrated if civilian, military and paramilitary leaders were brought to trial rather than minor perpetrators (para. 96).

15. In order to increase awareness of the role of the Tribunals in protecting and enhancing humanitarian values, the Tribunals should continue their outreach programmes (paras. 97-98).

16. In order to enable ICTR to defer to the national courts of a State, it is recommended that ICTR consider including a rule on the lines of ICTY rule 11 *bis* in the ICTR Rules (para. 101).

17. (a) In order to eliminate baseless appeals and conserve time that would otherwise have to be devoted to them by the parties and the Chambers, the Chambers might establish a preliminary screening mechanism to verify that they satisfy the grounds for appeal specified in the Rules;

(b) Alternatively, either party might consider filing motions for summary dismissal in cases where it clearly appears that the appeal is frivolous, such motions to be considered expeditiously by the Appeals Chamber (para. 103).

18. In order to ensure that appeals from both ICTY and ICTR Trial Chambers are considered only by Appeals Chamber judges, to immunize Appeals Chamber judges from being disqualified from hearing appeals through becoming connected with trials and to prevent the loss of insulation owing to judges being intermingled between the Trial and Appeals Chambers, judges should be assigned exclusively to the Trial Chambers or the Appeals Chamber for their entire terms (paras. 105-106).

19. In order to facilitate the work of the judges of the Trial and Appeals Chambers, legal staff assistance to the judges should be increased in terms of the budget proposals for the Tribunals for the year 2000 (para. 107).

20. In order to increase the work capacity of the Appeals Chamber, two further judges and the associated additional staff that would be required should be added to that Chamber, although this proposal might not lead to as satisfactory a result as the permanent separation of the Appeals Chamber (para. 107 and also para. 16 above).

21. In order to meet the need for more judges to deal with the increased workload, the use of temporary ad hoc judges might be favourably considered if it remains the only practical solution for expediting completing of the Tribunals' missions (para. 108).

22. On the long-term question of enforcement of sentences, in order to accommodate the potential number of convicts, it would be advisable for arrangements to be concluded with as many additional States as would be required to accommodate the total number of indictees, including individuals accused in sealed indictments (para. 110).

23. In view of the essentiality of the need for well-qualified lawyers in the ICTR Prosecution Section, the training programmes now being conducted should be continued (para. 121).

24. In order to avoid waste of resources and to maximize the impact of investigations, the policy of the Prosecutor should be continued to conduct investigations only where she has a high level of confidence that enough evidence will be available to support an indictment (para. 125).

25. In view of the importance of securing qualified personnel in the ICTR Investigations Section, this issue should be carefully monitored on a continuing basis by the Deputy Prosecutor to ensure that applicable standards are complied with (para. 129).

26. In order to reduce post-indictment investigations, a case should be "trial ready" at the stage that the indictment is confirmed and, absent exceptional circumstances, post-indictment investigations should be limited (para. 155).

27. On the assumption that there will be no change in the Prosecutor's policy for ICTR to join indictments to the extent necessary and possible, the Expert Group trusts that maximum care will be taken to ensure that motions for amended indictments and for joinders are sought in a timely and complete manner (para. 165).

28. ICTY should consider the appointment of a rule similar to ICTR rule 44 *bis* which creates a category of duty counsel having the qualifications needed to be appointed as assigned counsel and situated within reasonable proximity to the Detention Facility and the seat of the Tribunal (para. 184).

29. Since it is essential that continuous contact be maintained in appeals cases between the Trial Chambers and the Office of the Prosecutor in Arusha and the Appeals Chamber in The Hague, the assignment of two staff members to track, verify and expedite appeals documentation, in coordination with staff assigned for the same purpose in The Hague, is strongly supported (para. 185).

30. In order to help the Witnesses and Victims Section in controlling witness expenditures to the extent possible:

- The Registrar should be consulted regarding witness arrangements whenever trial adjournments or schedule changes are under consideration;
- The Registrar should receive as much advance notice as possible when the summoning of Court witnesses under rule 98 is under consideration (para. 191).

31. In order to enforce the observance of Detention Unit rules by defence counsel:

- The Commander of the Detention Unit should report promptly to the President and the Registrar incidents of misconduct by defence counsel;
- Such reports, as well as alleged abuse of Registry personnel by defence counsel, should be promptly investigated by the Registrar and, as appropriate, referred to the Tribunal or dealt with directly by the Registrar;
- Where misconduct is found, the President should report the matter to the appropriate national authority and order removal of the defence counsel from the list of approved defence counsel (para. 197).

32. In order to further the legitimate law-enforcement requirements of the Prosecutor, once she shows reasonable grounds under rule 66 of the Detention Rules for cooperative assistance, such assistance should be forthcoming from the Registrar without delay in accordance with the decision of the President referred to in paragraph 198, or the matter should immediately be referred to either the President or the Trial Chamber as provided in that decision (para. 200).

33. Procedures should be studied for short-term provisional release of detainees to provide for emergencies such as funeral arrangements or the terminal illness of a close relative under conditions of adequate guarantees from the detainee's country governing removal and return to detention (para. 201).

34. Because of the significant amounts paid to assigned counsel and their key role in the statutory scheme of both Tribunals, the issue whether remuneration levels are too high or too low deserves careful attention. Moreover, all possible methodologies for determining the amounts of payments to counsel should be considered (paras. 206-207).

35. In order to ensure that the qualifications required of counsel to be eligible to be assigned as defence counsel are appropriate, the ICTY standards for experience should be brought more in line with those of ICTR, and in both cases elevated to require at least five years of criminal trial experience (para. 210).

36. In order to better ensure accuracy and care in the preparation of claims by defence counsel for defence costs, each assigned counsel might be required to certify to the relevant Chamber as to the accuracy of and their entitlement to the payments claimed (para. 213).

37. In order to resolve the problems resulting from counsel appearing before the Tribunals who are unfamiliar with them and their procedures, with resulting delay and inefficiencies in Tribunal proceedings, training programmes should be developed dealing with the rudiments of Tribunal practice (paras. 214-215).

38. In order to reduce the costs and delay associated with changes of assigned counsel, the requirement that a change of counsel will be permitted only on a showing of exceptional circumstances should be adhered to, especially if there is any indication that a motion to change counsel is in any way related to efforts by the accused to improve on existing financial arrangements with Counsel (paras. 218 and 234).

39. If in the future the Registrar, after consultation with the judges, considers it desirable to improve the geographical spread of counsel who can be assigned, this might be done by establishing nationality priorities for adding new names to the list of counsel who can be assigned, rather than by denying assignment of those already on the list (para. 234).

40. In view of the extensive research needed by the judges, the prosecution and the defence for their work, the Library and Reference Units play a key role and should have the necessary resources (para. 235).

41. To ensure that the Language Services Sections of the Registries better contribute to the effective functioning of both the Chambers and the Office of the Prosecutor, it is essential that required resources be provided and that priorities be adhered to in the translation of documents (para. 236).

42. In order to better cope with priority translation needs, it is suggested that the Chambers, at the inception of a case, might require the parties to provide, on an ongoing basis, as much advance notice and information as possible with respect to the documents they expect to submit (para. 236).

43. In order to give the Chambers powers of supervision and control over their own judicial assistants and secretaries, their internal administrative matters, and budget proposals relating to the Chambers:

- The current system for the selection of judicial assistants, in which the judges have the decisive voice, should be continued;
- Since the judicial assistants and the secretaries work for the judges under their direct control and supervision, the judges should be responsible for, and sign, their performance evaluations;
- The judges should be entitled to submit to the General Assembly budget proposals which they feel satisfy their needs;
- Each President, as the senior official of the respective Tribunal, should feel free to transmit proposals on the entire Tribunal budget to the Registrar, without prejudice to the authority of the latter to submit to the Secretary-General the overall budget proposals for the Tribunal as a whole;
- The Secretary-General might appropriately issue a revised delegation of authority or an administrative instruction realigning, to the Bureau of the Chambers, control over their internal administrative matters (paras. 241-246).

44. To avoid disruption of the work of the Office of the Prosecutor through the application of the normal United Nations rules relating to the period of service of interns attached to that Office, consideration should be given to allowing, through an exception to the rules, those interns assigned to trial work to be appointed for a period of one year or the duration of the trial to which they are assigned, whichever is longer (para. 249).

45. In order to reduce misperceptions as to the relationship between the Chambers and the Office of the Prosecutor, to increase the efficiency of that Office by giving it control over certain supportive administrative units and to better reflect the independence of the Prosecutor, a realignment of administrative matters, through a re-delegation or administrative instruction, should be considered (paras. 250-252).

46. – On balance, there seems to be no compelling reason for a recommendation that the Security Council amend the Statute to provide an independent Prosecutor for ICTR;

– However, the Expert Group trusts that the Prosecutor will find occasion for more frequent visits to ICTR, covering longer periods of time and continuing close oversight of the ICTR prosecutorial operation in order, *inter alia*, to ensure similar standards in regard to the supervision she exercises over her staff, whether in The Hague or in Arusha/Kigali;

– At the same time, some recognition should be given, at the appropriate time in the future, to the special responsibilities which devolve upon the Deputy Prosecutor in Kigali in terms of the more independent nature of his work, which includes day-to-day contact with senior officials in the Government of Rwanda (para. 259).

Annex I

Interviews conducted in The Hague, Arusha and Kigali

A. Interviews Conducted in The Hague - (Total number of interviews: 51)

International Tribunal for the Former Yugoslavia

The Expert Group met with the following 12 Judges:

Judge Kirk-McDonald, Gabrielle, President
Judge Shahabuddeen, Mohamed, Vice-President
Judge Bennouna, Mohamed
Judge Hunt, David Anthony
Judge Jorda, Claude
Judge May, Richard
Judge Mumba, Florence
Judge Nieto-Navia, Rafael
Judge Riad, Fouad
Judge Robinson, Patrick
Judge Rodrigues, Almiro Simoes
Judge Vohrah, Lal Chand

The Expert Group met with the following staff member of Chambers:

Tolbert, David, Chef de Cabinet to the President

The Expert Group met with the following 17 staff members in the Office of the Prosecutor:

del Ponte, Carla (present) Prosecutor
Arbour, Louise, (previous) Prosecutor
Blewitt, Graham, Deputy Prosecutor

Stewart, James, Chief of Prosecutions
Harmon, Mark, Senior Trial Attorney
Haslund, Anne, Senior Trial Attorney
Hollis, Brenda, Senior Trial Attorney and Supervisor, Team Legal Adviser
Nice, Geoffrey, Senior Trial Attorney
Yapa, Upawansa, Senior Appeals Attorney

Fenrick, William, Senior Legal Adviser, Legal Advisory Section

Greenwood, Kate, Chief of Information and Evidence Unit

Ralston, John, Chief of Investigations
Pantz, Sylvie, Investigations Commander
Upton, Stephen, Investigations Commander

Nicholson, Peter, Team Leader and Head of Military Analysts Team
Simpson, Brett, Team Leader
Treanor, Patrick, Team Leader and Head of Leadership Research Team

The Expert Group met with the following nine staff members in the Office of the Registrar:

De Sampayo Garrido-Nijgh, Dorothée, Registrar
Heintz, Jean-Jacques, Deputy Registrar

Bos, Roeland, Court Deputy, Court Management and Support Unit

Dubuisson, Marc, Coordinator, Court Management and Support Unit
Espel, Joël, Chief, Victims and Witnesses Unit
Lobwein, Wendy, Support Officer, Victims and Witnesses Unit
MacGreegan, William, Coordinator, Victims and Witnesses Unit
McFadden, Tim, Commander, Detention Unit

Sellers, Robin, Chief of Budget Office, Administrative Division

The Expert Group met with the following two members of the Defence Counsel Unit:

Rohde, Christian, Chief
Lahiouel, Hafida, Associate Legal Officer

The Expert Group met with the following member of the ICTY Defence Counsel Association

Morrison, Howard

The Expert Group met with the following three Representatives of the European Community:

Harvola, Pertti, Ambassador of Finland
Hellman, Pasi, Second Secretary
Van Hamme, Alain, Member of EU-troika

The Expert Group met with the following two Representatives of the Government of Switzerland

Heinrich, Raimann, Ambassador of Switzerland
Kolly, Thomas, Counsellor to the Embassy of Switzerland

The Expert Group met with the following four members of the Advisory Panel:

von Schmidt, Peter, Panel President
Ms Morrison, Rosaleen, Panel Member
Mueller, Peter. M., Panel Member
Storm, Paul, Panel Member

B. Interviews conducted in Arusha and Kigali - (Total number of interviews: 42)

International Criminal Tribunal for Rwanda

The Expert Group met with the following ten Judges:

Judge Pillay, Navanethem, President
Judge Møse, Erik, Vice-President
Judge Aspegren, Lennart
Judge Dolenc
Judge Gunawardana,
Judge Güney
Judge Kama, Laity (in Paris)
Judge Ostrovsky, Yakov
Judge Sekule, William
Judge Williams

The Expert Group met with the following 15 staff members in the Office of the Prosecutor:

Mr. Muna, Bernard A., Deputy Prosecutor
Mr. Othman, Mohamed, Chief of Prosecution
Mr. Hindriks, Cornelis O., Chief of Investigations (in The Hague)

Ms Adong, Jane, Senior Trial Attorney
Mr. Assira, Leonard, Senior Trial Attorney

Mr. Menon, Nediumveetil S., Senior Trial Attorney
Mr. Spencer, David, Senior Trial Attorney

Mr. Kwende, Alfred, Investigations Division Commander
Mr. Akorimo, Samuel, Investigations Division Commander

Mr. Dobbie, Paul, Investigations Team Leader
Mr. Gzara, Mohamed, Investigations Team Leader
Ms Jaikarivony, Sehemo, Investigations Team Leader
Mr. Kone, Mamadou, Investigations Team Leader
Mr. Mengalle, Charles, Investigations Team Leader
Mr. Morisette, Gilbert, Investigations Team Leader

The Expert Group met with the following 14 staff members in the Office of the Registrar:

Mr. Okali, Agwu, Registrar
Mr. Fometé, Jean-Pelé, Legal Adviser, Office of the Registrar
Mr. Moghalu, Kingsley, Special Assistant to the Registrar and ICTR Spokesman

Ms Nyambe, Prisca, Chief, Court Management Section
Mr. Caldarone, Alessandro, Chief, Lawyers and Detention Facilities Unit
Mr. Guindou, Saidou, Commanding Officer UN Detention Facilities
Mr. Amoussouga, Roland, Chief, Witness and Victims Support Section
Mrs. Ngendahayo, Françoise, Adviser, Gender Issues and Assistance to Victims

Mr. Desta, Engda, Chief, Budget and Finance Section
Mr. Hashi, Mohamed, Deputy Chief of Administration in Kigali
Mr. Anguesomo, Esono, Chief, Personel Section
Mr. Kabore, George, Head, Recruitment Task Force
Mr. Diatta, Alassane, Chief, Language and Conference Services
Mr. Meixner, G., Assistant Librarian

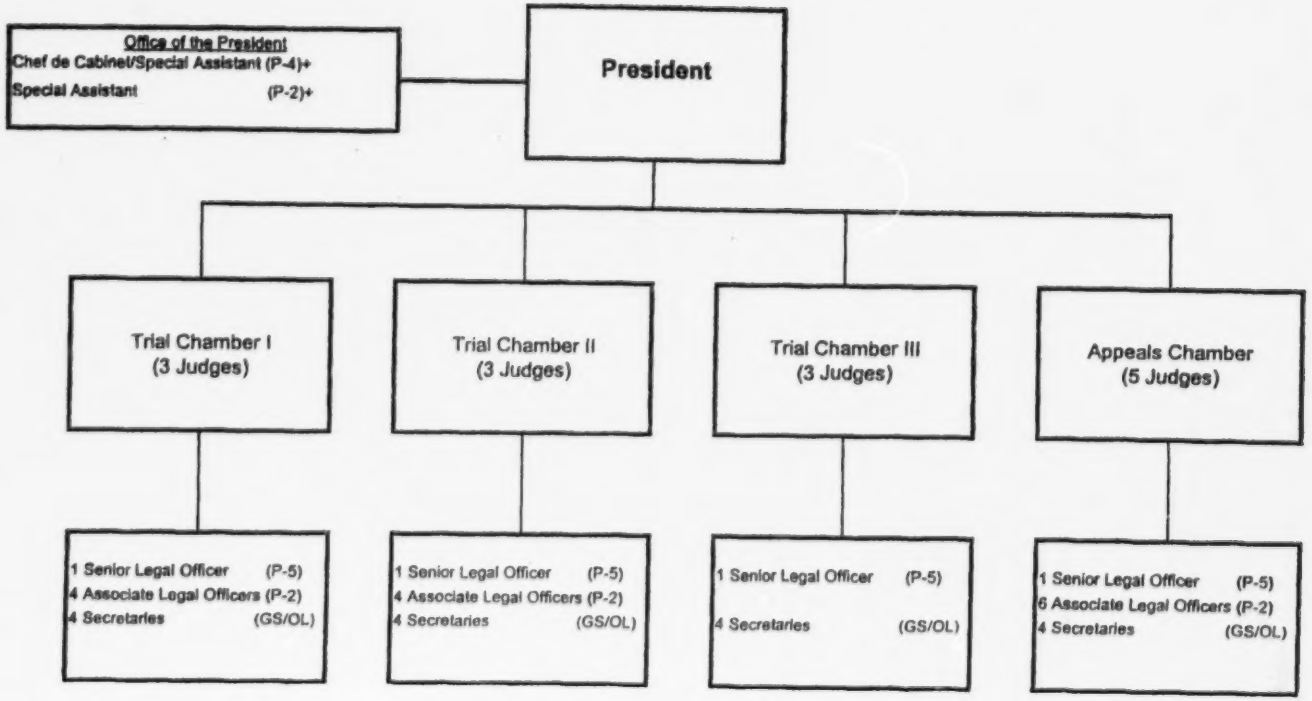
The Expert Group met with the following three Defence Counsel in Arusha:

Mr. Ogetto, Kennedy
Mr. Greavis, Michael
Ms Mongo, Patricia

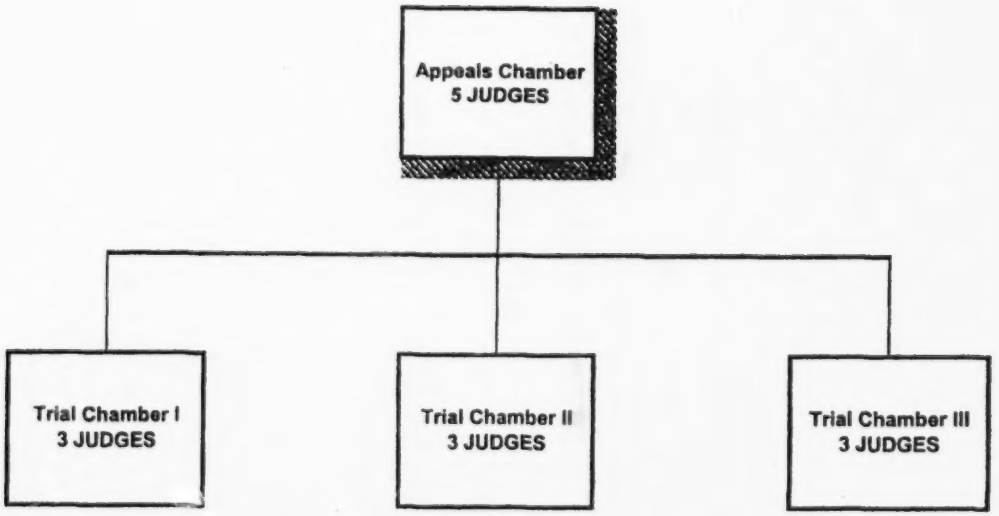
CHAMBERS

Annex II

A. International Tribunal for the Former Yugoslavia



B. International Criminal Tribunal for Rwanda



Annex III

The Trial Chamber judgement in "Celebici"

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Annex IV

"Checklist motion form" used in omnibus hearing

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA	x	
v.	x	
	x	CRIMINAL NO.
_____	x	
Defendant	x	

INSTRUCTIONS

If an item numbered below is not applicable to this case, then counsel will note the same in the margin opposite the item number with the letter "N.A."

A. DISCOVERY BY DEFENDANT

(Circle Appropriate Response)

1. The defense states it (has) (has not) obtained full discovery and (or) has inspected the government file, (except)

   (If government has refused discovery of certain materials, defense counsel shall state nature of material._____

   _____.)

2. The government states it (has) (has not) disclosed all evidence in its possession, favorable to defendant on the issue of guilt. In the event defendant is not satisfied with what has been supplied him in response to questions 1 and 2 above then:

3. The defendant requests and moves for – (Number circled shows motion requested)

   3 (a) Discovery of all oral, written or recorded statements or memorandum of them made by defendant to investigating officers or to third parties and in the possession of the government. (Granted) (Denied)

   3 (b) Discovery of the names of government's witnesses and their statements. (Granted) (Denied)

   3 (c) Inspection of all physical or documentary evidence in government's possession. (Granted) (Denied)

4. Defendant, having had discovery of Items #2 and #3, (requests and moves) (does not request and move) for discovery and inspection of all further or additional information coming into the government's possession as to Items #2 and #3 between this conference and trial. (Granted) (Denied)

5. The defense moves and requests the following information and the government states – (Circle the appropriate response)

5 (a) The government (will) (will not) rely on prior acts or convictions of a similar nature for proof of knowledge or intent.

(1) Court rules it (may) (may not) be used.

(2) Defendant stipulates to prior conviction without production of witnesses or certified copy. (Yes) (No)

5 (b) Expert witness (will) (will not) be called.

(1) Name of witness, qualification and subject of testimony, and reports (have been) (will be) supplied to the defence.

5(c) Reports or tests of physical or mental examinations in the control of the prosecution (have been) (will be) supplied.

5(d) Reports of scientific tests, experiments or comparisons and other reports of experts in the control of the Prosecution, pertaining to this case (have been) (will be) supplied.

5(e) Inspection and/or copying of any books, papers, documents, photographs or tangible objects which the Prosecution – (Circle appropriate response)

(1) obtained from or belonging to the defendant, or

(2) which will be used at the hearing or trial, (have been) (will be) supplied to defendant.

5(f) Information concerning a prior conviction of persons whom the Prosecution intends to call as witnesses at the hearing or trial (has been) (will be)supplied to defendant.

5(g) Government (will) (will not) use prior felony conviction for impeachment of defendant if he testifies,

Date of conviction_____Offense_____

(1) Court Rules it (may) (may not) be used.

(2) Defendant stipulates to prior conviction without production or witnesses or certified copy. (Yes) (No)

5(h) Any information government has, indicating entrapment of defendant (has been) (will be) supplied.

B. MOTIONS REQUIRING SEPARATE HEARING

6. The Defence moves – (number circled shows motion requested)

6(a) To suppress physical evidence in plaintiff's possession on the grounds of -
(Circle appropriate response)

(1) Illegal search and seizure

(2) Illegal arrest

6(b) Hearing of motion to suppress physical evidence set for

_____ .

(Defendant will file formal motion accompanied by memorandum brief within_____days. Government counsel will respond within _____days thereafter).

6(c) To suppress admissions or confessions made by defendant on the grounds of –
(Circle appropriate response)

(1) Delay in arraignment

(2) Coercion or unlawful inducement

(3) Violation of the Miranda Rule

(4) Unlawful arrest

(5) Improper use of lineup (Wade, Gilbert, Stovall decisions)

(6) Improper use of photographs.

6(d) Hearing to suppress admissions, confessions, lineup and photos is set for:

(1) Date of trial, or

(2) _____.

(Defendant will file formal motion accompanied by memorandum brief within_____days. Government counsel will respond within_____days thereafter).

The government to state:

6(e) Proceedings before the grand jury (were) (were not) recorded.

6(f) Transcriptions of the grand jury testimony of the accused, and all persons whom the prosecution intends to call as witnesses at a hearing or trial (have been) (will be) supplied.

6(g) Hearings re supplying transcripts set for _____

6(h) The government to state :

(1) There (was) (was not) an informer (or lookout) involved;

(2) The informer (will) (will not) be called as a witness at the trial;

(3) It has supplied the name, address and phone number of the informer; or

(4) It will claim privilege of non-disclosure.

6(i) Hearing on privilege set for _____

6(j) The government to State :

There (has) (has not) been any – (Circle the appropriate response)

(1) Electronic surveillance of the defendant or his premises;

(2) Leads obtained by electronic surveillance of defendant's person or premises;

(3) All material will be supplied, or

6(k) Hearing on disclosure set for _____.

C. MISCELLANEOUS MOTIONS

7. The Defence moves – (Number circled shows motion requested)

7(a) To dismiss for failure of the indictment (or information) to State an offense.
(Granted) (Denied)

7(b) To dismiss the indictment or information (or count____thereof) on the ground of duplicity.
(Granted) (Denied)

7(c) To sever case of defendant_____and for a separate trial.
(Granted) (Denied)

7(d) To sever count_____of the indictment or information and for a separate trial thereon.
(Granted) (Denied)

7(e) For a Bill of Particulars. (Granted) (Denied)

7(f) To take a deposition of witness for testimonial purposes and not for discovery.
(Granted) (Denied)

7(g) To require government to secure the appearance of witness_____who is subject to government direction at the trial or hearing. (Granted) (Denied)

7(h) To dismiss for delay in Prosecution. (Granted) (Denied)

7(i) To inquire into the reasonableness of bail. Amount fixed_____ .

(Affirmed) (Modified to_____)

D. DISCOVERY BY THE GOVERNMENT

d.1. Statements by the Defense in response to government requests.

8. Competency, Insanity and Diminished Mental Responsibility

8(a) There (is) (is not) any claim of incompetency of defendant to stand trial.

8(b) Defendant (will) (will not) rely on a defense of insanity at the time of offense;

If the answer to 8(a) or (b) is "will" the

8(c) Defendant (will) (will not) supply the name of his witnesses, both lay and professional, on the above issues;

8(d) Defendant (will) (will not) permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney;

8(e) Defendant (will) (will not) submit to a psychiatric examination by a court appointed doctor on the issue of his sanity at the time of the alleged offense.

9. Alibi

9(a) Defendant (will) (will not) rely on an alibi;

9(b) Defendant (will) (will not) furnish a list of his alibi witnesses (but desires to be present during any interview).

10. Scientific Testing

10(a) Defendant (will) (will not) furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.

10(b) Defendant (will) (will not) provide the government with all records and memoranda constituting documentary evidence in his possession or under his control or (will) (will not) disclose the whereabouts of said material. If said documentary evidence is not available but destroyed, the defense (will) (will not) state the time, place and date of said destruction and the location of reports, if any, concerning said destruction.

11. Nature of the Defense

11(a) Defense counsel states that the general nature of defense is – (Circle appropriate response)

(1) Lack of knowledge of contraband

(2) Lack of specific intent

(3) Diminished mental responsibility

(4) Entrapment

(5) General denial. Put government to proof, but (will) (may) offer evidence after government rests.

(6) General denial. Put government to proof, but (will) (may) offer no evidence after government rests.

11(b) Defense counsel states it (will) (will not) waive husband and wife privilege.

11(c) Defense (will) (may) (will not) testify.

11(d) Defendant (will) (may) (will not) call additional witnesses.

11(e) Character witnesses (will) (may) (will not) be called.

11(f) Defense counsel will supply government names, addresses and phone numbers of additional witnesses for defendant_____days before trial.

D.2. Ruling on government request and motion

12. Government moves for the defendant –

12(a) to appear in a lineup. (Granted) (Denied)

12(b) to speak for voice identification by witness (Granted) (Denied)

12(c) to be finger printed. (Granted) (Denied)

12(d) to pose for photographs. (not involving a re-enactment of the crime) (Granted) (Denied)

12(e) to try on articles of clothing. (Granted) (Denied)

12(f) Surrender clothing or shoes for experimental comparison. (Granted) (Denied)

12(g) to permit taking of specimens of material under fingernails. (Granted) (Denied)

12(h) to permit taking samples of blood, hair and other materials of his body which involve no unreasonable intrusion. (Granted) (Denied)

12(i) to provide samples of his handwriting. (Granted) (Denied)

12(j) to submit to a physical external inspection of his body. (Granted) (Denied)

E. STIPULATIONS

If the stipulation form will not cover sufficiently the area agreed upon, it is recommended that the original be attached hereto and filed at the omnibus hearing..

(All stipulations must be signed by the defendant and his attorney, as required by Rule 17.1, F.R., Cr.P.)

13. It is stipulated between the parties:

13(a) That if_____was called as witness and sworn he would testify h was the owner of the motor vehicle on the date referred to in the indictment (or information) and that on or about that date the motor vehicle

disappeared or was stolen and that he never gave the defendant or any other person permission to take the motor vehicle.

_____ _____

Attorney for the Defendant Defendant

13(b) That the official report of the chemist may be received in evidence as proof of the weight and nature of the substance referred to in the indictment (or information)

_____ _____

Attorney for Defendant Defendant

13(c) That if _____the official government chemist were called, qualified as an expert and sworn as a witness he would testify that the substance referred to in the indictment (or information) has been chemically tested and

is _____and the weight is_____

_____ _____

Attorney for Defendant Defendant

13(d) That there has been a continuous chain of custody in government agents from the time of the seizure of the contraband to the time of the trial.

_____ _____

Attorney for Defendant Defendant

13(e) Miscellaneous stipulations:

_____.

_____.

_____.

_____.

_____.

_____.

_____ _____

Attorney for Defendant Defendant

F. CONCLUSION

14. Defence counsel states:

14(a) That defense counsel as of the date of this conference of counsel knows of no problems involving delay in arraignment, the Miranda Rule or illegal search and seizure or arrest, or any other constitutional problem, except as set forth above. (Agree) (Disagree)

14(b) That defense counsel has inspected the check list on this OH-3 Action Taken Form, and knows of no other motion, proceeding or request which he desires to press, other than those checked thereon. (Agree) (Disagree)

15. Defense counsel states:

15(a) There (is) (is not) (may be) a probability of a disposition without trial.

15(b) Defendant (will) (will not) waive a jury and ask for a court trial.

15(c) That an Omnibus Hearing (is) (is not) desired, and government counsel (agree) (disagree).

15(d) If all counsel conclude after conferring, that no motions will be urged, that an Omnibus Hearing is not desired, they may complete, approve and have the defendant sign (where indicated) Form OH-3, and submit it to the Court not later than five (5) days prior to the date set for the Omnibus Hearing, in which event no hearing will be held unless other wise directed by the Court.

15(e) If a hearing is desired, all counsel shall advise the Court in writing not later than five (5) days prior to the date set for the Omnibus Hearing whether or not they will be ready for such hearing on the date set in the Order Setting Conference of Counsel and Omnibus Hearing.

APROVED: Dated:_____

_____.

Attorney for the United States

_____.

Attorney for the Defendant

_____.

Defendant

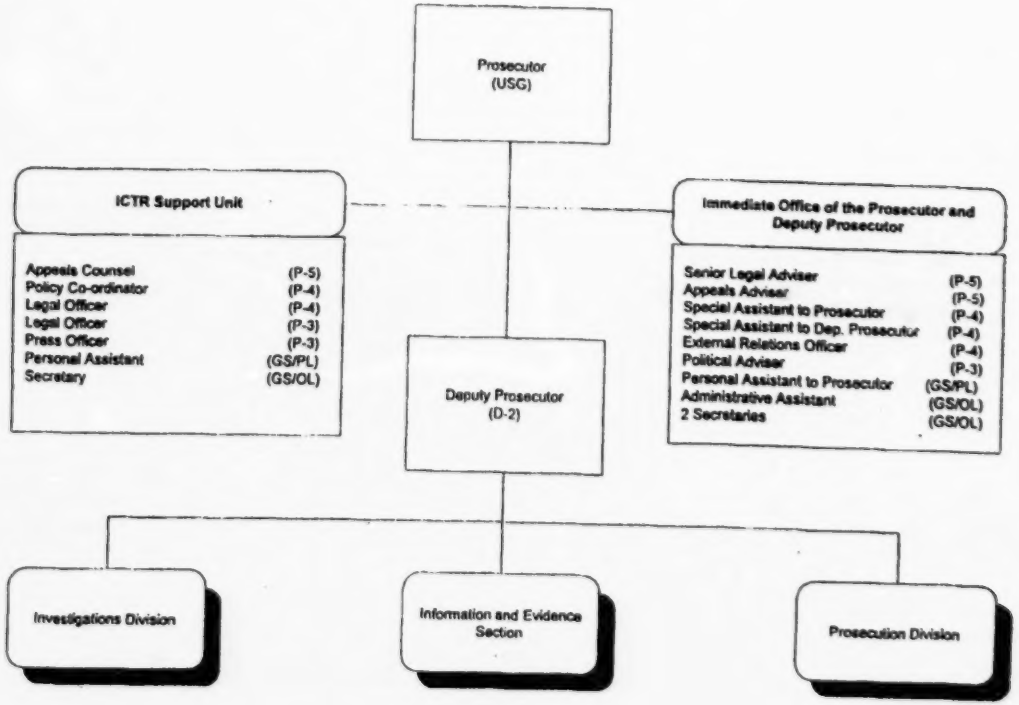
SO ORDERED:

_____.

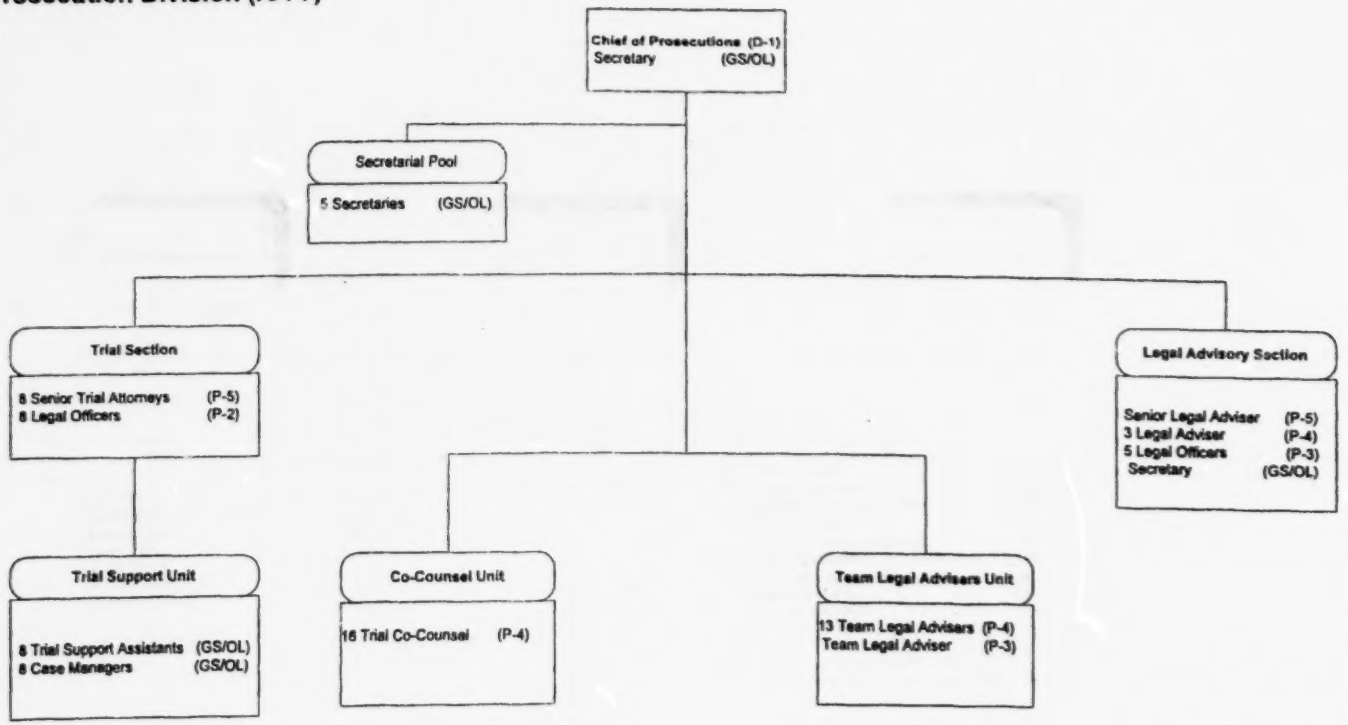
United States District Judge

Structure of the Office of the Prosecutor

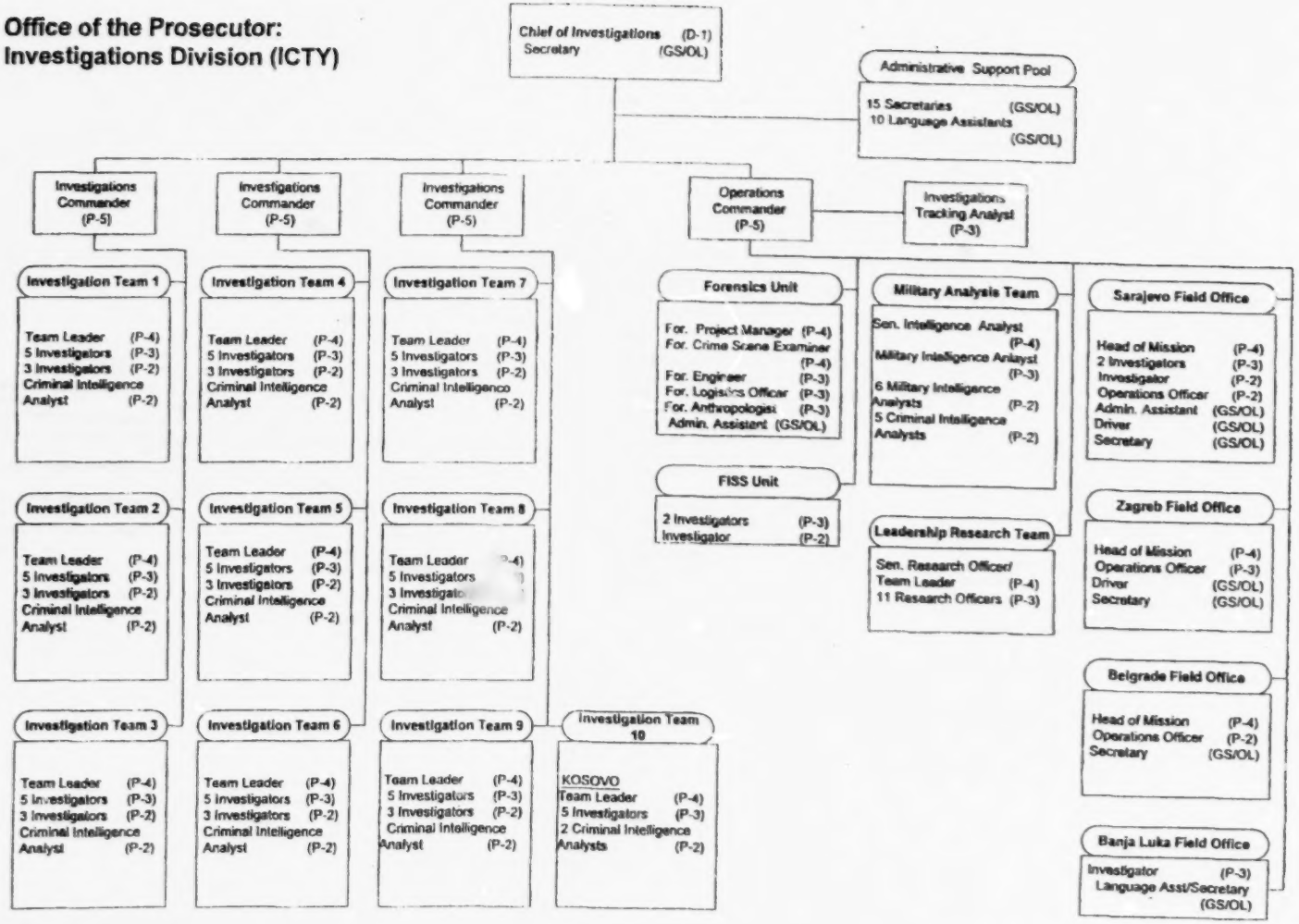
Office of the Prosecutor:
Immediate Office of the Prosecutor and Deputy Prosecutor (ICTY)



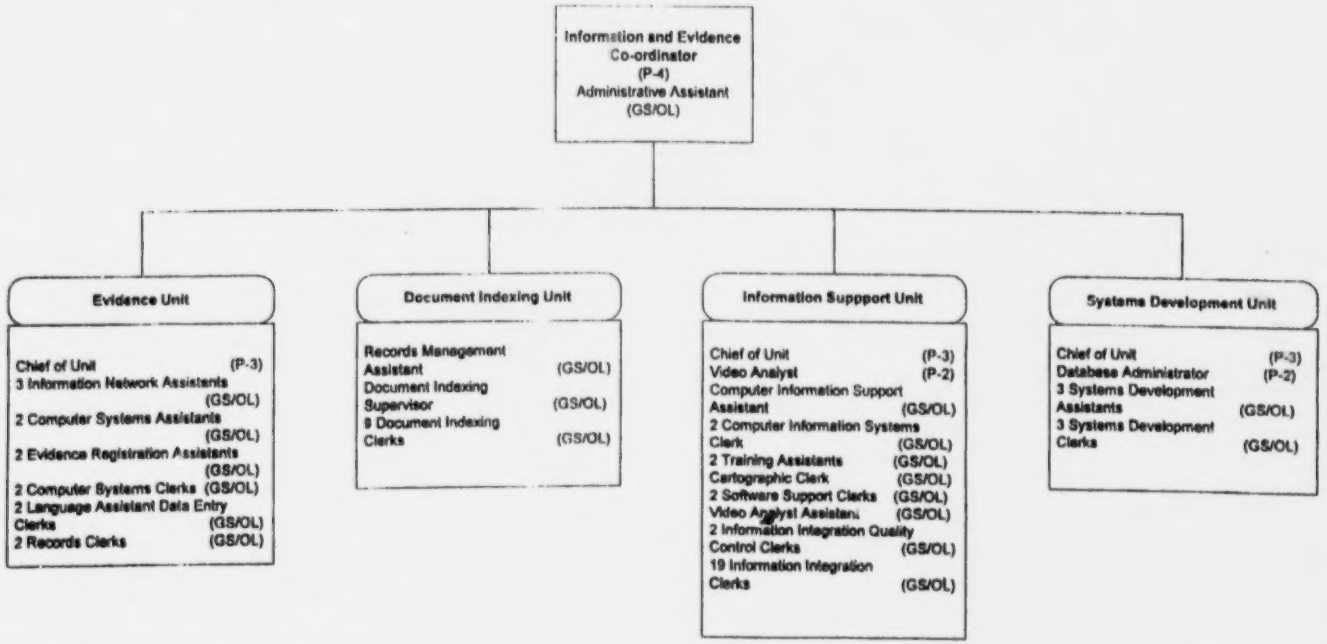
Office of the Prosecutor: Prosecution Division (ICTY)



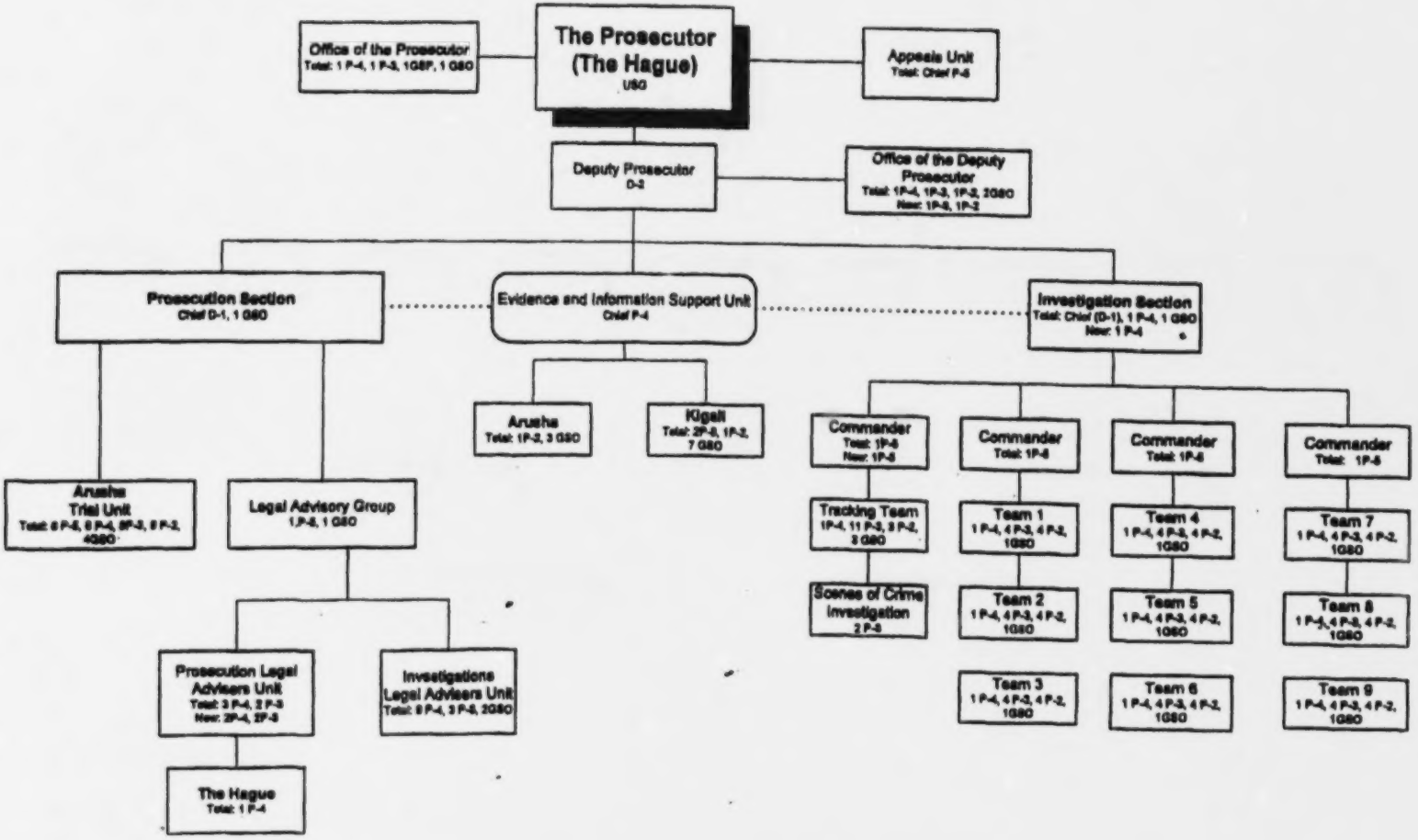
Office of the Prosecutor: Investigations Division (ICTY)



Office of the Prosecutor:
Information and Evidence Section (ICTY)


Information and Evidence Co-ordinator (P-4)
Administrative Assistant (GS/OL)
Evidence Unit
Chief of Unit (P-3)
3 Information Network Assistants (GS/OL)
2 Computer Systems Assistants (GS/OL)
2 Evidence Registration Assistants (GS/OL)
2 Computer Systems Clerks (GS/OL)
2 Language Assistant Data Entry Clerks (GS/OL)
2 Records Clerks (GS/OL)
Document Indexing Unit
Records Management Assistant (GS/OL)
Document Indexing Supervisor (GS/OL)
9 Document Indexing Clerks (GS/OL)
Information Suppport Unit
Chief of Unit (P-3)
Video Analyst (P-2)
Computer Information Support Assistant (GS/OL)
2 Computer Information Systems Clerk (GS/OL)
2 Training Assistants (GS/OL)
Cartographic Clerk (GS/OL)
2 Software Support Clerks (GS/OL)
Video Analyst Assistant (GS/OL)
2 Information Integration Quality Control Clerks (GS/OL)
19 Information Integration Clerks (GS/OL)
Systems Development Unit
Chief of Unit (P-3)
Database Administrator (P-2)
3 Systems Development Assistants (GS/OL)
3 Systems Development Clerks (GS/OL)

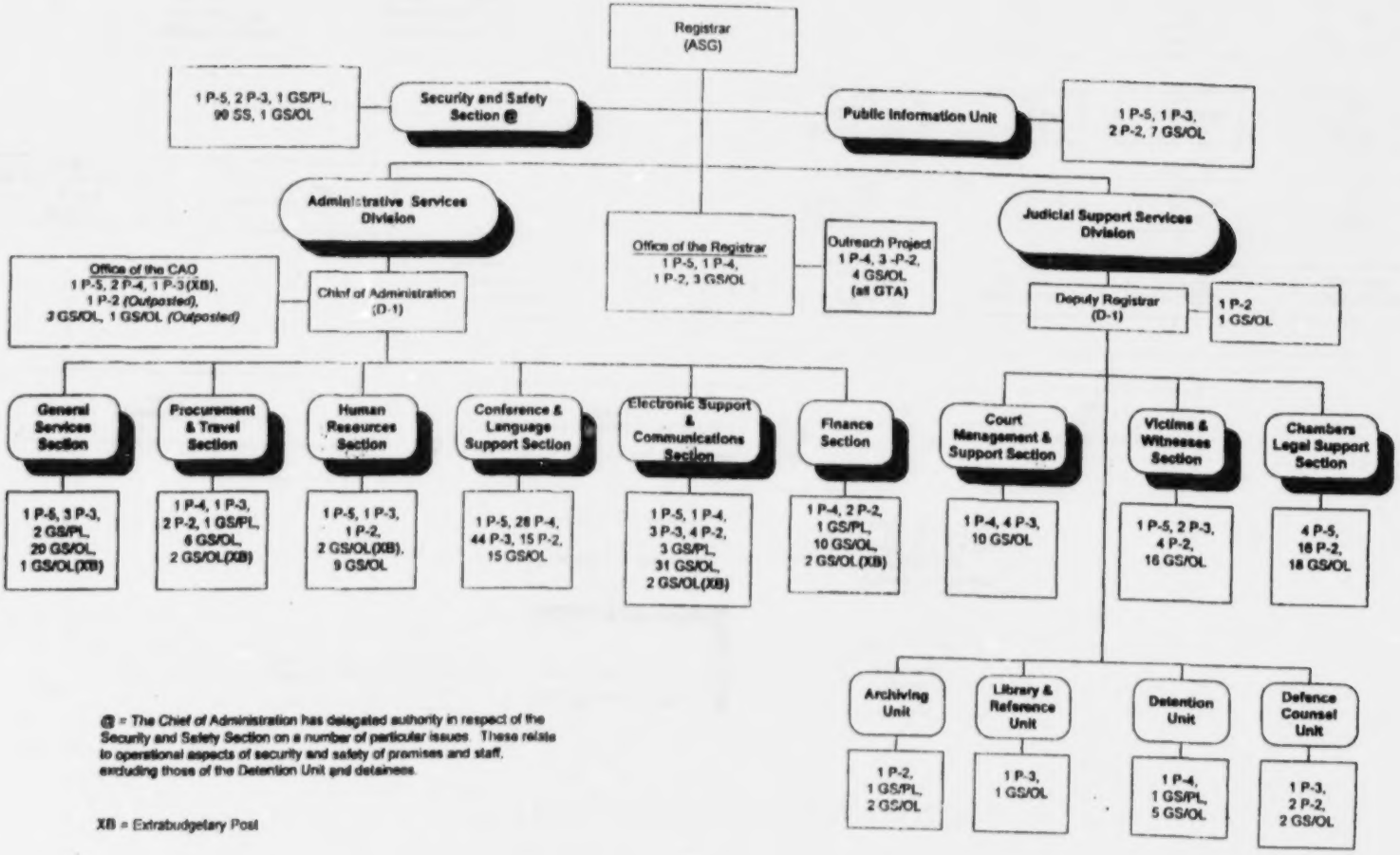
Office of the Prosecutor (ICTR)



Annex VI

Structure of the ICTY and ICTR Registries

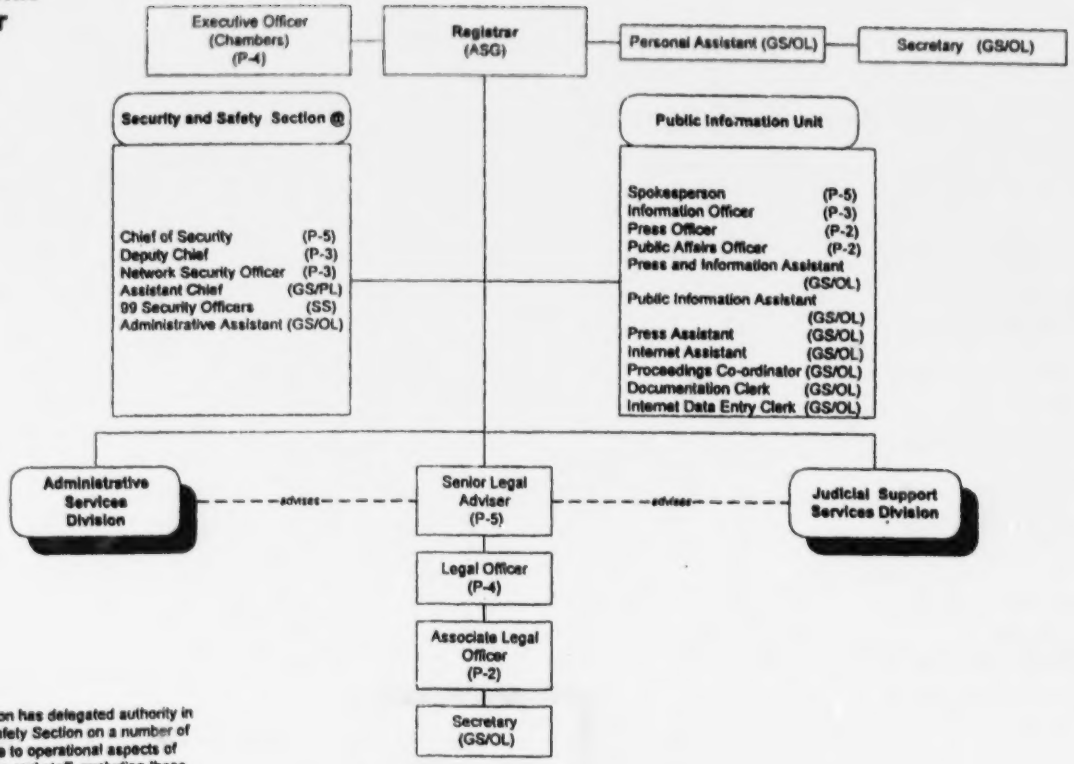
The Registry (ICTY)


Registrar (ASG)
1 P-5, 2 P-3, 1 GS/PL, 90 SS, 1 GS/OL
Security and Safety Section @
Public Information Unit
1 P-5, 1 P-3, 2 P-2, 7 GS/OL
Administrative Services Division
Office of the Registrar
1 P-5, 1 P-4, 1 P-2, 3 GS/OL
Outreach Project
1 P-4, 3 -P-2, 4 GS/OL (all GTA)
Judicial Support Services Division
Office of the CAO
1 P-5, 2 P-4, 1 P-3 (XB), 1 P-2 (Outposted), 3 GS/OL, 1 GS/OL (Outposted)
Chief of Administration (D-1)
Deputy Registrar (D-1)
1 P-2
1 GS/OL
General Services Section
1 P-5, 3 P-3, 2 GS/PL, 20 GS/OL, 1 GS/OL(XB)
Procurement & Travel Section
1 P-4, 1 P-3, 2 P-2, 1 GS/PL, 6 GS/OL, 2 GS/OL(XB)
Human Resources Section
1 P-5, 1 P-3, 1 P-2, 2 GS/OL(XB), 9 GS/OL
Conference & Language Support Section
1 P-5, 28 P-4, 44 P-3, 15 P-2, 15 GS/OL
Electronic Support & Communications Section
1 P-5, 1 P-4, 3 P-3, 4 P-2, 3 GS/PL, 31 GS/OL, 2 GS/OL(XB)
Finance Section
1 P-4, 2 P-2, 1 GS/PL, 10 GS/OL, 2 GS/OL(XB)
Court Management & Support Section
1 P-4, 4 P-3, 10 GS/OL
Victims & Witnesses Section
1 P-5, 2 P-3, 4 P-2, 16 GS/OL
Chambers Legal Support Section
4 P-5, 16 P-2, 18 GS/OL
Archiving Unit
1 P-2, 1 GS/PL, 2 GS/OL
Library & Reference Unit
1 P-3, 1 GS/OL
Detention Unit
1 P-4, 1 GS/PL, 5 GS/OL
Defence Counsel Unit
1 P-3, 2 P-2, 2 GS/OL

@ = The Chief of Administration has delegated authority in respect of the Security and Safety Section on a number of particular issues. These relate to operational aspects of security and safety of premises and staff, excluding those of the Detention Unit and detainees.

XB = Extrabudgetary Post

The Registry (ICTY):
a) Security and Safety Section
b) Public Information Unit
c) Senior Legal Adviser



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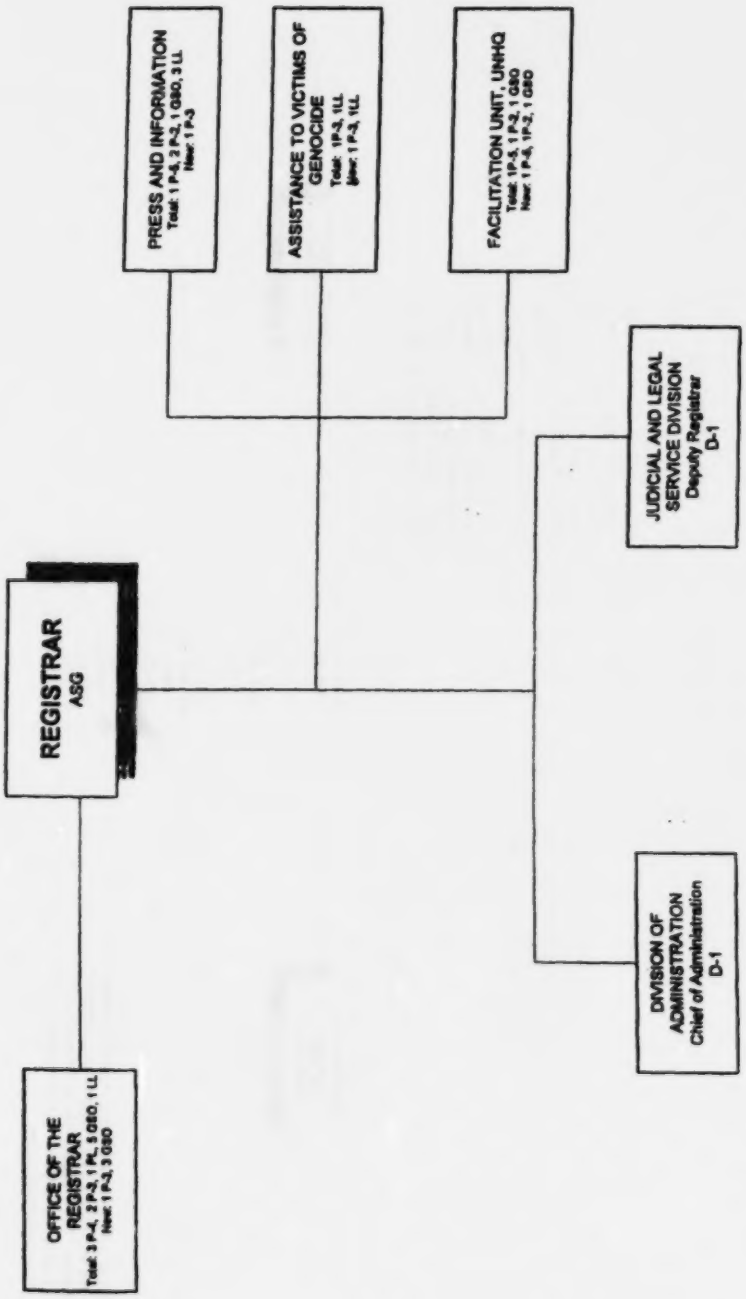
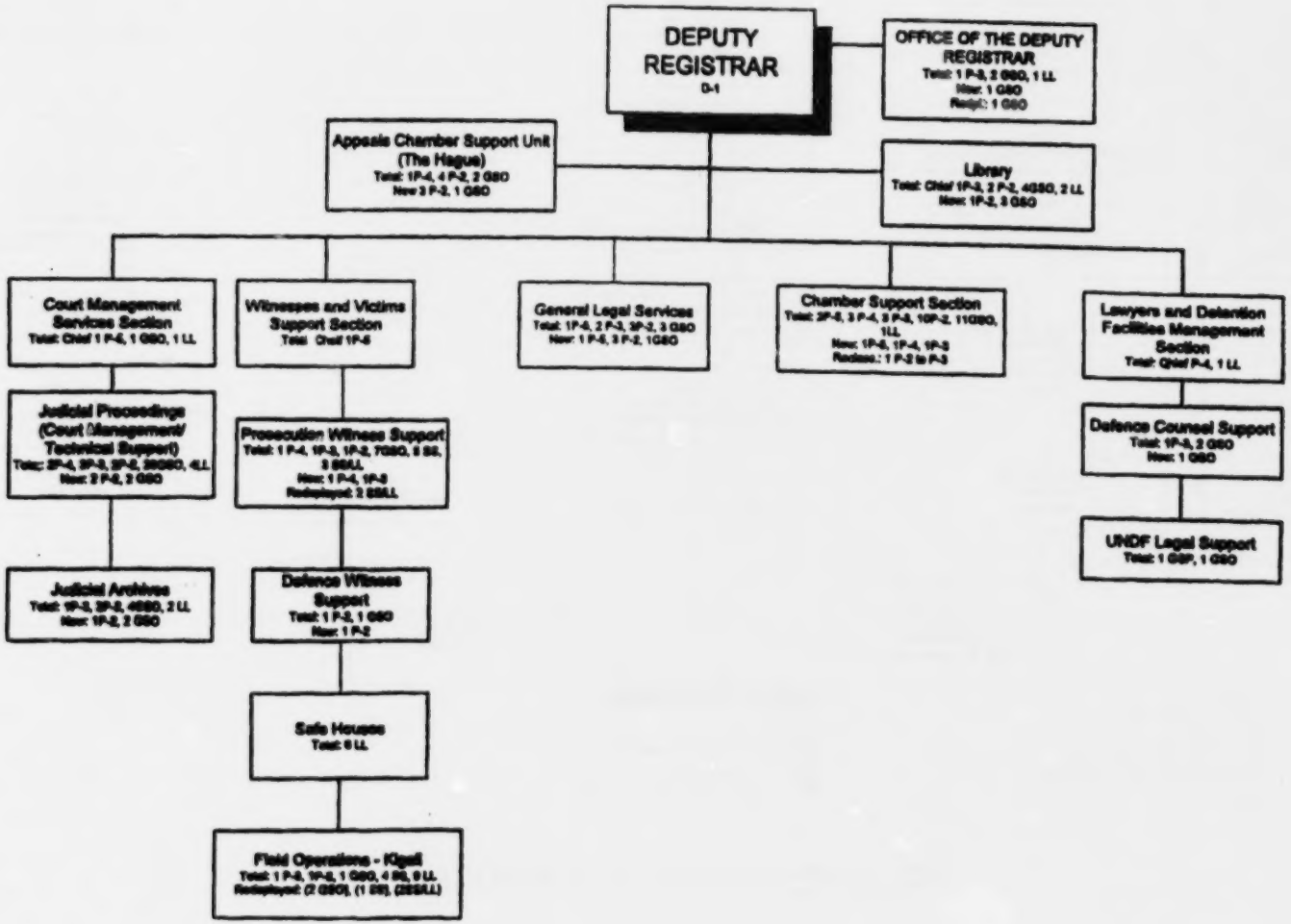
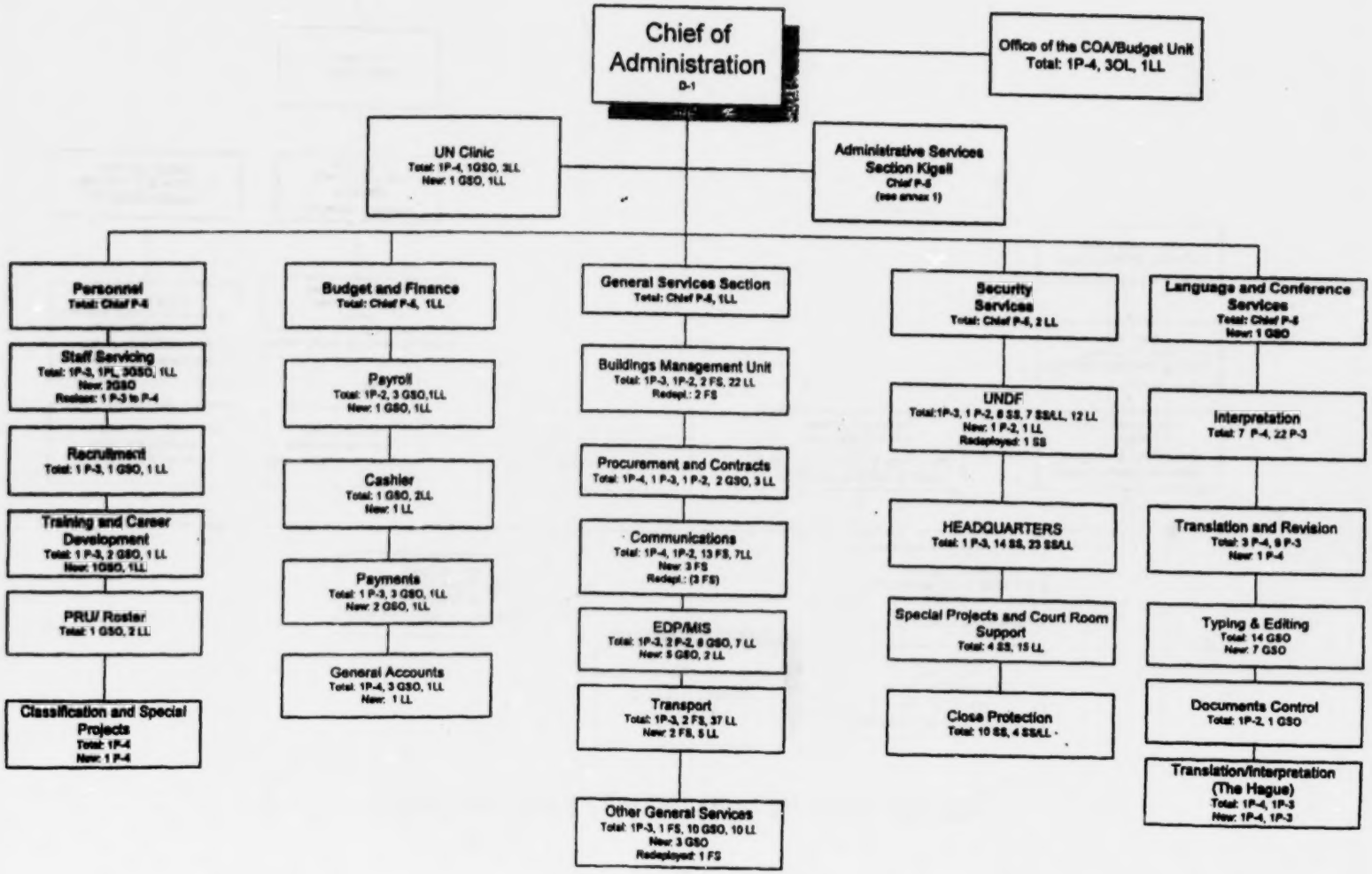
The Registry (ICTR)


REGISTRAR
ASG
OFFICE OF THE REGISTRAR
Total: 3 P-4, 2 P-3, 1 PL, 5 GSO, 1 LL
New: 1 P-4, 3 GSO
PRESS AND INFORMATION
Total: 1 P-4, 2 P-3, 1 GSO, 3 LL
New: 1 P-3
ASSISTANCE TO VICTIMS OF GENOCIDE
Total: 1P-3, 1LL
New: 1 P-3, 1LL
FACILITATION UNIT, UNHQ
Total: 1P-5, 1 P-3, 1 GSO
New: 1 P-5, 1P-2, 1 GSO
JUDICIAL AND LEGAL SERVICE DIVISION
Deputy Registrar
D-1
DIVISION OF ADMINISTRATION
Chief of Administration
D-1

Judicial and Legal Services Division (ICTR)


DEPUTY REGISTRAR
D-1
OFFICE OF THE DEPUTY REGISTRAR
Total: 1 P-5, 2 GSO, 1 LL
New: 1 GSO
Recpt: 1 GSO
Appeals Chamber Support Unit (The Hague)
Total: 1P-4, 4 P-2, 2 GSO
New 3 P-2, 1 GSO
Library
Total: Chief 1P-5, 2 P-2, 4GSO, 2 LL
New: 1P-2, 3 GSO
Court Management Services Section
Total: Chief 1 P-5, 1 GSO, 1 LL
Witnesses and Victims Support Section
Total: Chief 1P-5
General Legal Services
Total: 1P-5, 2 P-3, 3P-2, 3 GSO
New: 1 P-5, 3 P-2, 1GSO
Chamber Support Section
Total: 2P-5, 3 P-4, 3 P-3, 10P-2, 11GSO, 1LL
New: 1P-5, 1P-4, 1P-3
Redeploy.: 1 P-2 to P-3
Lawyers and Detention Facilities Management Section
Total: Chief P-4, 1 LL
Judicial Proceedings (Court Management/ Technical Support)
Total: 2P-4, 2P-3, 2P-2, 2GSO, 4LL
New: 2 P-5, 2 GSO
Prosecution Witness Support
Total: 1 P-4, 1P-3, 1P-2, 7GSO, 6 SS, 3 SSLL
New: 1 P-4, 1P-3
Redeployed: 2 SSLL
Defence Counsel Support
Total: 1P-3, 2 GSO
New: 1 GSO
Judicial Archives
Total: 1P-3, 2P-2, 4GSO, 2 LL
New: 1P-2, 2 GSO
Defence Witness Support
Total: 1 P-3, 1 GSO
New: 1 P-2
UNDF Legal Support
Total: 1 GSP, 1 GSO
Safe Houses
Total: 6 LL
Field Operations - Kigali
Total: 1 P-4, 1P-2, 1 GSO, 4 SS, 9 LL
Redeployed: (2 GSO), (1 SS), (2SSLL)

Division of Administration (ICTR)